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HELA

Analysis of responses to the National Local Authority Enforcement Code consultation

A Paper by Kate Haire

Cleared by Kevin Myers on 5th January 2015

Issue

1. This paper provides an analysis of responses received to the consultation on the National Local Authority Enforcement Code (the Code).

Timing

2. For discussion at the meeting on 20th January 2015.

Recommendation

3. That HELA considers the outcomes of the consultation.

Background

4. The review of the implementation of the National Code was undertaken by means of an open consultation for regulators and business running from 8th of August 2014 for 8 weeks. In addition there were discussions with stakeholders and consideration of the annual data return. 222 Local Authority and 63 business representatives responded to the online consultation. A full analysis of the on-line consultation is in Annex 1. In summary the key consultation findings are:
 - a. LAs predominantly report being risk based and targeted, with a significant increase in the use of national or local intelligence to target inspections – this was also supported by LAE1 annual returns and in discussion with LAs;
 - b. The most common reasons for LAs not doing any proactive inspections were either that no high risk sectors/activities were identified or that other interventions had been used to help local businesses manage their risks. This had led to an increase in the number of LAs advisory visits;
 - c. Most LAs reported they would make it clear to a business why they have been targeted for an intervention and what they are there to do.

Businesses also reported that LA officers make it clear if they were there to inspect health and safety or give advice only;

- d. The supporting materials for the code need improvement and clarification and this should involve further stakeholder engagement. In addition, those with interests in licensed explosives or certificated petroleum sites identified the Codes relation to this area needed further specific attention;
 - e. The majority of business responders either felt that they got the right amount of regulatory attention from LA regulatory staff or too little attention. Very few felt they received too much attention;
 - f. Only about half of LAs had a complaints procedure that references the Independent Regulatory Challenge Panel (IRCP). Only just over a third of business responders were aware of the IRCP;
 - g. Whilst some respondents felt the code was useful or that it reflected their current practice, some LAs had interpreted the Code as being over prescriptive; and
 - h. Some LAs and businesses raised concerns regarding the maintenance of LA inspector competency and the resource pressures upon health and safety regulatory services within local authorities.
5. The analysis of the on-line consultation results and initial face-to-face discussions with stakeholders indicates that no substantive changes are required to the Code itself. However, in response to the findings of the consultation we are in the process of undertaking further detailed discussions with key business and LA stakeholders to invite further comment.
 6. HELA paper 18/02 provides further details on revising the supplementary material to the Code.

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Annex 1 – Summary analysis of the on-line Consultation of the implementation of the National Local Authority Enforcement Code for Health and Safety at Work in England, Scotland and Wales - 2014

During the 8 week consultation period, starting on 8th of August 2014, the Health and Safety Executive (HSE) received 285 responses. The consultation was promoted through representative industry and Local Authority stakeholder groups that had previously been involved in the development of the National Code; representatives of devolved Government; the HSElex extranet email system and extranet site; HSE's website and bulletin system, and a general press release.

This summary analysis will be available via HSE's Knowledge Centre by email: - KnowledgeCentre@hse.gsi.gov.uk or calling direct on 0151 951 4382.

Analysis of Responses

Who contributed to the public consultation?

Respondents' views represented either:

- a Local Authority (LA) or a from a body representing LA interests - 222
- a business and/or organisations that represent business employers or employees (e.g. Trade Associations, Trade Unions etc.) - 63

Once respondents picked whom they represented they then had the opportunity to respond to a question set tailored to that group. These question sets are considered in turn below.

Analysis of the consultation questionnaires

Whilst there were 285 responses to this public consultation, not every respondent answered every question.

Summary of responses from LA regulators or a from a body representing LAs:

There were 222 responses in this group, not everyone answered all questions.

Q1. Since the introduction of the Code is the targeting of your health and safety proactive inspections:

- More risk based - 120
- Less risk based - 6
- No change - 53

HSE's response

Text comments and subsequent discussions with LAs suggest that many of the 'No change' responses were LAs who identified themselves as already being risk based in their approach. The indication is that the majority of LAs are using a risk based approach to the targeting of proactive interventions and so are compliant with that objective of the Code.

Q2. Is the targeting of your other health and safety interventions:

- More risk based - 112
- Less risk based - 10

- No change - 57

HSE's response

Text comments and subsequent discussions with LAs suggest that many of the 'No change' responses were LAs who were already risk based. The indication is that the majority of LAs are using a risk based approach to the targeting of their non-proactive interventions and thus are compliant with that objective of the Code.

Q3. Is the range of Health and Safety interventions you use:

- Wider - 43
- Narrower - 61
- Unchanged – 75

HSE's response

Text comments and subsequent discussions with LAs suggest that many of the 'Unchanged' responses were LAs who were already using a wide range of health and safety interventions.

Whilst a number of LAs have moved towards a wider range of interventions there is an indication that significant number are actually pursuing a narrower range of interventions. Additional information provided by LAs suggested they felt this may be due to:

- A view that the Code was restricting their activities, and/or
- The reduction in their resources.

HSE will continue to monitor the annual return of health and safety activity from LA regulatory services to identify if there are LAs who may not be fulfilling their duties under the Health and Safety at Work Act 1974.

The Code and its supporting materials seek to promote the use of the most appropriate intervention and outline the wide number of interventions available. HSE will seek to improve the supporting materials to the Code, to make it more explicit that the Code does not prevent the use of the most appropriate form of intervention.

Q4. Do you find that that you are using local or national intelligence to target Health and Safety interventions:

- More often - 91
- Less often – 9
- No change from before – 79

HSE's response

Text comments and subsequent discussions with LAs suggest that many of the 'No change from before' responses were LAs who were already using local or national intelligence to target their interventions. The indication is that the Code has resulted in a significant increase in the use of intelligence to target health and safety interventions.

Q5. Did your LA carry out any proactive Health and Safety inspections in 2013/14?

- Yes - 150
- No – 29

Q6. If you have answered ‘No’ (i.e. no proactive inspections were undertaken) is this because (please choose one or more options):

- no high risk sectors/activities (from the List) - 17
- lack evidence that risks are not being managed effectively - 9
- used a variety of other interventions to help business manage risk - 18
- lack resources - 7
- resources re-allocated to other H&S work e.g. a major prosecution - 6
- lack competent inspectors - 2

HSE’s response - Q5 & Q6

HSE notes that a significant majority of LAs still undertook proactive inspections. The most common reasons for not undertaking any proactive inspections were that no site had been identified that warranted such an intervention, or that they had used an alternative form of intervention. Both of these are in keeping with the Code.

Q7. When carrying out a Health and Safety intervention how likely are you to make it clear to business the reason why they were targeted (e.g. complaints, accidents or adverse insurance reports)?

- Not likely - 5
- Somewhat likely - 10
- Moderately likely - 9
- Likely - 47
- Extremely likely - 108

HSE’s response

HSE notes that the vast majority of LAs are either likely or extremely likely to tell businesses why they have been targeted for an intervention. This is in accordance with the Code’s requirements of regulator transparency and openness.

Q8. When carrying out a Health and Safety intervention how likely is it that you will make it clear what you intend to do there (e.g. health and safety only, or health and safety and food safety or there to primarily deal with some other non-health and safety issues)?

- Not likely - 1
- Somewhat likely - 1
- Moderately likely - 8
- Likely - 49
- Extremely likely - 120

HSE’s response

HSE notes that the vast majority of LAs are likely or extremely likely to make it clear what they are there to do, which is in keeping with the Code’s requirements of being open and transparent. HSE will consider if stressing this sort of activity more clearly in the Code’s supporting guidance would further improve implementation or if other action is required.

Q9. When undertaking proactive Health and Safety inspections or advisory visits do you make it clear to business the distinction between these two approaches?

- Yes – 164
- No - 10

HSE's response

HSE notes that the vast majority of LAs make it clear to businesses whether they are there to inspect or give advice. This is in keeping with the Code's requirements of being open and transparent. HSE will consider if stressing such activity more clearly in the Code's supporting guidance would further improve implementation or if other action is required to encourage even better alignment to the Code.

Q10. Since the Code was introduced: Has the number of times you use advisory visits as an alternative intervention to proactive inspection:

- Increased - 78
- Decreased - 22
- No Change – 74

HSE's response

HSE notes that many LAs reported an increase in the use of advisory visits as an alternative to inspection. This suggests LAs were being more proportionate in their activity as required by the Code. In addition, text comments and subsequent discussions with LAs suggest that many of the 'No change' responses were LAs who already used the full range of interventions and were already operating in a manner that aligned with the Code. HSE will seek to improve the Code's supporting guidance to encourage greater implementation.

Q11. Are your Health and Safety advisory visits predominantly: Summary

- a) part of another regulatory visit - 93
- b) stand alone advisory visits - 81

Q12. If you have answered a) to Questions 11 are these other regulatory visits predominantly:

- food hygiene regulatory visits – 74
- regulatory visits for a purpose other than food hygiene – 30

HSE's response - Q11 and Q12

HSE notes that advisory visits were as likely to be combined with other regulatory activity as to be devoted to health and safety. When it was part of another regulatory intervention it was most likely to be as part of a food hygiene regulatory visit. HSE recognises that many LA regulators are operating across different regulatory disciplines so will draft regulator guidance in as clear a manner as possible.

Q13. LAC67/2 (rev4) sets out a feedback mechanism by which LAs, individually, or through their Liaison groups, can alert HSE of novel or emerging issues via LAU.Enquiries@hse.gsi.gov.uk

Did you know that you could alert HSE in this way?

- Yes – 91
- No - 82

HSE's response

HSE notes that almost half of LAs did not know they could raise novel or emerging issues in this way. HSE has updated the HELEX extranet website for LA regulatory staff to make such reporting easier and clearer and will seek to promote this in its interactions with LAs.

Q14. Have you found that the Code's encouragement to use risk-based targeting for Health and Safety made resource management easier?

- Yes – 81
- No - 93

HSE's response

HSE notes there is no clear overall opinion that the Code has impacted upon resource management.

Q15. Have you found the supplementary guidance to the Code and LAC 67/2 (rev 4) useful in supporting your LA meet the requirements of the Code?

- Yes - 125
- No – 49

HSE's response

HSE notes the majority of LAs found the supplementary guidance useful and will seek to improve the guidance to aid those who have not found it useful.

Q16. How useful would the following additional guidance/support be in helping LAs meet the requirements of the Code?

(Individuals provided multiple responses to this question and could indicate preference)

A chart of the responses follows:

	Not useful	Somewhat useful	Moderately useful	Useful	Extremely useful
case studies/examples on the use of proactive inspection				●	
clearer definitions in the list of high risk sectors/activities				●	
setting/planning intervention priorities/targeting			●		
use of premises risk rating			●		
case studies/examples of alternative risk-based interventions			●		
help in identifying where risks are not being effectively managed			●		
clarification on dealing with matters of evident concern (MEC)			●		
case studies/examples on using intelligence to help target interventions			●		
explaining to business why you are there		●			

HSE's response

HSE notes the relative interest in the various guidance/supporting documents and will address this when it revises the existing suite of documents.

Q17. During 2013/14 did your LA make use of BRDO's Regulators Development Needs Analysis (RDNA) and Guidance for Regulators Information Point (GRIP) to encourage inspector competence?

Respondent's comments

- Yes - 99
- No – 68

HSE's response - Q17

HSE notes that many LAs continue to use the RDNA to support regulator competence. Follow up discussions with LAs identified that whilst many LAs do use RDNA for new and developing officers, such as those changing duties, those with existing experienced staff find it too bureaucratic to use annually. These comments have been communicated to the BRDO who now operate the LA RDNA.

Q18. In the last year has your LA carried out a peer review against any of the following topics?

(Individuals provided multiple responses to this question)

A table of the responses follows:

Topic Reviewed	Number of responses	
	Yes	No
LAE1 Returns	67	99

Enforcement Decisions	52	114
Intervention Plans	67	99
Competence Arrangements	43	123
Another Topic	28	138

HSE's response - Q18.

There is not a requirement for peer review to be carried out every year but HSE notes that many LAs have undertaken peer review within the last year, and that a range of different topics were considered. HSE will continue to support this process via local liaison and central support.

Q19. Does your LA have easily accessible complaints procedures that clearly reference the Independent Regulatory Challenge Panel?

- Yes - 83
- No - 85

HSE's response - Q19

HSE notes that only around half of LAs had easily accessible complaints procedures that clearly reference the Independent Regulatory Challenge Panel. HSE will engage with the LAs and their representative bodies to encourage wider compliance.

The following 2 questions specifically relate to Petroleum Enforcement Authorities and or Explosive Licensing Officers who regulate petroleum and explosives licensing/permissioning regimes.

Would you like to answer these?

(This was a 'gatekeeping' question for Q20-21 that were expected to have only been relevant to a small subset of the responders)

- Yes – 37
- No - 131

HSE's response

HSE notes that only a relatively small number of the LA respondents had an interest in explosive licencing or petroleum certification.

The Code applies to all Local Authority regulatory activity undertaken by officers warranted under the Health and Safety at Work Act. This includes their activity at licensed explosives and certificated petroleum sites.

Question 20: To help avoid confusion, should the Code specifically mention its relevance to licensed explosives and certificated petroleum sites?

- Yes – 30
- No - 5

HSE's response – Q20.

HSE notes the need to clarify this issue and will address it when it revises the existing suite of documents.

Following the reviews on explosives and petroleum legislation, HSE will update the relevant section of LAC67/2(rev4).

Question 21: What changes would you like to see in LAC67/2(rev4) in relation to explosives and petroleum. Pick all that apply.

(Individuals provided multiple responses to this question)

A chart of the responses follows:

	Yes	No
Amend LAC 67/2 (rev4) to remove reference to the now completed reviews		
A more detailed explanation of why the LAC 67/2(rev4) does not apply to explosives and petroleum licensing regulations		
Direct readers to guidance that regulators could use		
Other explosive/petroleum relevant issues		

HSE's response – Q21

HSE notes the relative interest in the various possible changes. In addition further comments were received that related to the need for clarity, the support of consistent regulatory activity and the need to consult with both petroleum and firework stakeholders over any changes. HSE will address these issues when it revises the existing suite of documents.

Q22. Are there any further comments you would like to make on the issues raised in this questionnaire?

Respondent's comments

79 comments were received and the key issues relating to the implementation of the code were grouped in order of expression as:

- Limited LA resources are making compliance more challenging
- The need for greater clarity in the Code's supporting material
- Difficulty in identifying local poor performers
- Need to share best practice
- Have found the code helpful
- Risk rating approach should be reviewed
- The reviewed materials should be ready before the next work year

HSE's response – Q22

HSE notes the issues raised and will seek to address them if possible when it revises the existing suite of documents.

Q23. Are there any further comments you would like to make on the issues raised in this questionnaire?

Respondent's comments

71 comments were received.

The most common view expressed was that they would have preferred the opportunity to have given more detailed responses to the questions posed. However, there were also a number of responses that appreciated the clarity and simplicity of the consultation.

HSE's response – Q23

HSE notes the wish for more detailed consultation, and has supplemented the on-line survey with direct discussion with LAs on the issues raised in this consultation.

Summary of responses from non-regulators - businesses and/or organisations that represent employers or employees

There were 63 responses in this group, not everyone answered all questions.

Q1. In the last year were you (or the organisations that you represent) visited by an LA officer?

- Yes - 21
- No - 29
- Not sure - 11

HSE's response

HSE notes that not all responders had been visited in the last year. More detailed analysis of the responses suggested that of the responders that were business around half had been inspected in the previous year.

Q2. If you answered 'Yes' to question 1, do you know if the visit was undertaken to address health and safety at work i.e. issues regulated by the Health and Safety at Work Act?

- Yes - 13
- No – 5
- The reason was not made clear - 3

HSE's response

HSE notes that the majority of consultation responders visited by LA officers were for health and safety reasons so those responders will have experienced current LA practice.

Q3. Was it made clear that the visit was either a health and safety inspection or an advisory visit?

- Yes - 15
- No – 2
- It was not made clear - 4

HSE's response

HSE notes that the majority of responders had been clearly informed if their health and safety intervention was an inspection or advisory, this indicates LA behaviour in accordance with the Code. HSE will seek to improve the supporting materials to the Code, to further encourage LA implementation.

Q4. If this was an advisory visit had the LA been asked to visit e.g. for health and safety advice in general or for a specific problem?

- Yes - 5
- No – 16

Q5. If the LA was not asked to visit was it made clear why the business had been targeted for the health and safety visit? (e.g. the business is particularly high risk or there was intelligence [e.g. complaints, accidents or adverse insurance reports] to show that risks were not being effectively managed.)?

- Yes - 6
- No – 2
- The reason was not made clear – 2

HSE's response to Q4 & Q5

HSE notes that the majority of advisory visits were not as a result of requests for assistance. Where the visit was unsolicited the most common view was that the LA had made it clear why the business had been targeted. However, there were a significant proportion of cases where either there was no expressed reason for the advisory visit, or it was not made clear. HSE will seek to improve the supporting materials to the Code, to encourage better targeting and communication by LAs.

Q6. Did the LA inspector focus on the businesses key health and safety risks?

- Yes - 9
- No – 2
- Don't know – 6

HSE's response

HSE notes that where the responders understood their key health and safety risks they agreed that LA inspectors had focused on those topics. This demonstrates LAs being targeted and proportionate in their work and complying with the Code. It also indicates that the LA inspectors are competent and able to identify the key health and safety issues in the workplace.

Q7. In terms of helping to manage risks more effectively was the visit

- Not useful - 7
- Somewhat useful - 0
- Moderately useful - 2
- Useful - 7
- Extremely useful - 1

HSE's response

HSE notes that just under half of the responders did not find the LA visit useful. As part of improving the supporting materials to the Code HSE will liaise with business stakeholders to investigate this further.

Q8. Which of the following sources of information is used by business to get health and safety advice?

(Individuals provided multiple responses to this question and could indicate preference)

A chart of the responses follows:

	Not likely	Somewhat likely	Moderately likely	Likely	Extremely likely
Inspection/advisory visit					
Contacting LA inspector					
internet					
library					
LA web site					
HSE web site					
health and safety consultant					
trade or business association					
primary authority					
Trade Union					
ask other businesses					

HSE's response

HSE notes that the most common sources of health and safety are the internet/HSE's website and will ensure that any revisions to the key supporting documents to the Code are made available online

Q9. Does the Code look like it will help LAs to take a more risk-based approach to the targeting of their health and safety interventions?

- Yes – 20
- No – 10
- Don't know - 11

HSE's response

HSE notes that, where the responders expressed an opinion, the majority considered that the Code would assist LAs in taking a more risk based approach to intervention targeting.

Q10. In the last year do you think the amount of attention you have received from Health and Safety regulatory staff in Local Authorities was:

- Too high - 3
- Too low - 19
- About right – 19

HSE's response

HSE notes that very few responders considered that they received too much regulatory attention from LA health and safety regulatory staff. As part of improving the supporting materials to the Code HSE will liaise with business stakeholders to investigate this further.

Q11. The Code clarifies the responsibility of business to manage the risks that they create. Has the Code encouraged business to manage their health and safety risks more effectively?

- Yes - 13
- No – 18
- Don't know – 10

HSE notes that many responders did not feel the Code had encouraged businesses to improve their health and safety management. As part of improving the supporting materials to the Code HSE will liaise with business stakeholders to investigate this further.

Q12. There is an Independent Regulatory Challenge Panel (ICRP) which will look into complaints regarding advice given by HSE or LA inspectors about health and safety which you think is incorrect or goes beyond what is required to control the risk adequately. The ICRP will also receive complaints where business considers that they operate in a lower risk sector and have been unreasonably subject to a proactive health and safety inspection by an LA.

Were you aware that there is an Independent Regulatory Challenge Panel?

- Yes – 15
- No – 26

HSE's response

HSE notes that business awareness of the ICRP is still low and we will be taking steps to improve this.

The following 2 questions specifically relate to businesses regulated by petroleum and explosives licensing/permissioning regimes.

Would you like to answer these?

(This was a 'gatekeeping' question for Q13-14 that were expected to have only been relevant to a small subset of the responders)

- Yes – 7
- No - 34

HSE's response

HSE notes that only a relatively small number of the responders had interest in explosive licencing or petroleum certification.

Q13. Given that the code applies to enforcement on licensed explosives and certificated petroleum sites, to help avoid confusion, should a specific mention to this effect be included in the Code?

- Yes – 4
- No - 1

HSE's response

HSE notes that the majority of the responders felt that there should be specific mention of licensed explosives and certificated petroleum sites in the Code. HSE will seek to address this as part of improving the supporting materials to the Code.

Q14. It is HSE intention to update the text in LAC67/2(rev4) following the completion of the reviews on explosives and petroleum legislation. What changes would you like to see in this guidance in relation to explosives licensing and petroleum certification? Pick all that apply.

(Individuals provided multiple responses to this question and could indicate preference)

A chart of the responses follows:

	Yes	No
Amend LAC 67/2 (rev4) to remove reference to the now completed reviews	<input type="checkbox"/>	<input checked="" type="checkbox"/>
A more detailed explanation of why the LAC 67/2(rev4) does not apply to explosives and petroleum licensing regulations	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Direct readers to guidance that regulators could use	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other explosive/petroleum relevant issues	<input type="checkbox"/>	<input checked="" type="checkbox"/>

HSE's response

HSE notes the views expressed and will seek to address them when it revises LAC 67/2 rev4.

Q15. Are there any further comments you would like to make on the issues raised in this questionnaire?

Respondent's comments

24 comments were received. There were two main concerns expressed, firstly concern that rogue operators may not be detected by available intelligence and secondly LA resources and/or competency may not be sufficient.

HSE's response

HSE notes the issues raised and will seek to address them if possible when it revises the supporting guidance for the Code.

Q16. Are there any further comments you would like to make on the issues raised in this questionnaire?

Respondent's comments

19 comments were received. The most common view expressed was that the consultation had been easy to respond to, other comments related to limited LA resources/competency.

HSE's response

HSE notes the responses.