

HSE response to the public consultation on proposals for a National Local Authority Enforcement Code – Health and Safety at Work, England, Scotland and Wales

Introduction

1. This is a report on the outcome of HSE's public consultation to seek views on the draft National Local Authority Enforcement Code (the Code). The Code sets out Government expectations on a risk based approach to targeting health and safety regulatory interventions. It provides a principle based framework that recognises the respective roles of business and the regulator in the management of risk.

Background

2. In his report, *"Reclaiming health and safety for all: An independent review of health and safety legislation"*, commissioned by the then Minister for Employment, Professor Ragnar Löfstedt recommended that HSE be given a stronger role in directing Local Authority (LA) health and safety inspection and enforcement activity. The National Code has been developed in response to this recommendation and as an outcome of the Red Tape Challenge on health and safety. It is designed to ensure that LA health and safety regulators take a more consistent and proportionate approach to their regulatory interventions.
3. The Code sets out Government expectations of a risk based approach to targeting proactive inspections. Implementing and complying with the Code will deliver the central Government expectation that comparatively lower risk businesses should not be subject to proactive unannounced inspections unless there is a reason to suspect that risks are not being effectively managed.
4. A public consultation was published on the HSE website and ran for a period of ten weeks, commencing on 21 December 2012 and concluding on 1 March 2013. HSE invited responses from business, Trade Unions and local government. The consultation was promoted on the HSE's website homepage, HSE's extranet service for health and safety regulators, via e-bulletins and presentations, which were given to a range of audiences across England, Scotland & Wales.
5. The consultation document was downloaded 9844 times. Respondents were asked to complete a questionnaire online or to download the questionnaire for return by email. There were 337 responses to the questionnaire with a further 3 responses provided by letter. Of these, 246 were from LAs and their representative bodies, 79 from businesses and their representatives, 9 Trade Union (TU) responses and 3 from Central Government.

What did the consultation tell us?

6. Responses to the consultation are summarised as follows:

Question 1: Do you feel that the measures outlined in the Code and Annex will effectively deliver the Government's commitment to stop Local Authorities from proactively inspecting low risk businesses on health and safety grounds?

7. This question was answered a total of 337 times (246 LA, 79 business, 9 TU and 3 Central Government); within this 270 respondents answered the specific yes/no question (214 LA, 46 business, 7 TU and 3 Central Government). The remaining respondents provided comments only.
8. Overall, 80% of respondents agreed that the measures outlined in the Code would stop LAs from proactively inspecting lower risk premises on health and safety grounds. Breaking the figures down further for LAs and business explicitly showed that 84% of LAs and 65% of businesses agreed that the measures would deliver the Government's commitment.
9. The majority of LA respondents thought that the measures outlined were helpful and that they represented the next step in the evolution of regulatory policy. Some identified that the reduction in LA resourcing was also influencing this change. In this regard the Code was welcomed in providing the necessary measures for maximising efficiency and making best use of limited resource.
10. Business respondents recognised the role of LAs in providing support and advice to business and that risks can be very premises specific. Of those who disagreed with the statement some had concerns that they would lose the help and support LAs provide, particularly to SME's. A small number of larger multi-site businesses and their representatives expressed a lack of confidence that the LAs would respond to the measures outlined but did not propose any alternative means of addressing the issue.
11. A need for further more detailed guidance to LAs to ensure consistency was a key theme raised in response to this question and this cropped up in several places in the responses to other questions posed. We have highlighted the specific areas for which guidance was requested in the responses to the individual questions and bring these together to propose that a suite of guidance be developed to support the Code.
12. There were a number of respondents who asked for clarification on whether the Code applied to other regulatory areas where there appeared to be a

variance in policy (e.g. food hygiene).

13. Of the TU's, 29% agreed and 71% disagreed. The disagreements were more objections in principle to the policy and the list of activities/sectors for inspection rather than the means in which we are seeking to implement a National Code for LAs.
14. There were also concerns raised by both LAs and business about the scope and effect of Annex A. These issues will be covered in more detail in the responses to questions 4 and 5.
15. ***In response to these comments we will:***
 - ***Reinforce the role of advice and support in encouraging better risk management by business; and***
 - ***Make it clear that we will provide supporting guidance and keep this under review based on our experience of the implementation of the Code.***

Question 2: Is the scope of the National Code sufficiently defined?

16. This question was answered 319 times; with 69% (219) of respondents agreeing that the scope was sufficiently defined.
17. The comments in response to this question which underpinned the negative responses related to suggestions for further guidance, clarification on the role of Primary Authority (see paragraphs 11, 15 & 30) and inclusion of references to the role of workers and their representatives and additional sources of advice in respect of risk management (see paragraph 54).

Question 3: What are your views on the risk based approach proposed?

18. This question was answered 327 times; 239 LA and 76 businesses provided comments. The majority of respondents (256 or 78%) supported the risk based approach proposed.
19. Some respondents to this question (37 or 11%) suggested further guidance would be helpful and this was also echoed in other question responses e.g. on what constituted evidence of poor performance; how LAs should deal with health and safety matters of evident concern identified when undertaking advisory visits or when visiting a premises for a different regulatory reason; the range of interventions available; and requests to be more specific on the references to “national guidance” within the Code (see paragraph 30).

Question 4: What are your views on the proposal for HSE to publish a list of the higher risk sectors (and key activities) appropriate to be targeted for proactive inspection by LAs (the example list at Annex A)?

20. This question was answered 329 times (240 LA, 77 business, 9 TU and 3 Central Government).
21. Most LA respondents (185 or 77%) agreed that having a list of higher risk sectors and key activities appropriate to be targeted for proactive inspection would be helpful. There were also a range of comments on timing and review periods with LAs requesting that the information on priorities be provided in a timely manner, in accordance with LA planning cycles. LAs and their representative bodies welcomed the flexibility within the Code to deal with local priorities and issues and felt that this should be referenced within the list.
22. LAs also suggested a formalised feedback loop so that HSE receives information on local priorities. We will consider how best to respond to this suggestion as part of our considerations of the governance and partnership arrangements between HSE and LAs.
23. Business respondents generally (51 or 66%) welcomed the list both in reinforcing the need for greater vigilance in the control of risk and in ensuring transparency and consistency of approach from LA regulators.
24. The TUs welcomed the provision of such guidance to LAs but expressed concerns that the list is too prescriptive and limited those areas in which proactive inspections could take place.

Question 5: What are your views on the contents of Annex A?

25. This question was answered 321 times (239 LA, 70 business, 9 TU and 3 Central Government).
26. The Annex to the consultation document which lists the activities and sectors for proactive inspection will not form part of the Code but will be published as a separate document at appropriate intervals.
27. Business respondents wanted more specification and tighter definitions within the list and some responses queried why some activities/sectors were included on the list and others not. Business respondents also suggested that guidance be provided on how Primary Authority inspection plans should link with the list.
28. Many respondents to this question (71 or 21%) thought that additional information and guidance on risk rating and targeting regulatory interventions

would be helpful along with links to relevant operational guidance (see paragraphs 11 & 15). This view was repeated elsewhere in response to other consultation questions.

29. In addition, in response to this question it was generally (36 or 11%) agreed that the list would require regular review, particularly to take into account new and emerging risks. This view was also repeated elsewhere in response to other consultation questions.

30. ***In response to these comments we will:***

- ***Provide more emphasis and information on the Primary Authority Scheme and its role in ensuring consistency;***
- ***Clarify the requirement for Primary Authority inspection plans to follow the principles outlined in the Code; and***
- ***Amend the list to tighten the definitions of the activities/sectors.***

Question 6: What are your views on the assurance measures proposed for LAs on meeting the requirements of the Code?

31. This question was answered 314 times (236 LA, 66 business, 9 TU and 3 Central Government).

32. The assurance measures were largely supported by both business and LA respondents.

33. Some LA respondents requested further guidance on peer review and on what data should be provided to HSE to ensure the returns are provided on a consistent and accurate basis. LAs also considered it helpful to specifically refer to the role of county liaison groups in the peer review.

34. Business respondents welcomed the Independent Regulatory Challenge Panel as providing a mechanism for an independent review of LAs' actions. Business representative groups in particular were keen to ensure that the panel is publicised and we welcome their offer of support in this regard.

35. ***In response to these comments we will:***

- ***Include reference to the role of LA liaison groups; and***
- ***Work with interested businesses to better publicise the Independent Regulatory Challenge Panel.***

Question 7: Will the Code require regular review in the future?

36. Question 7 was answered 316 times (235 LA, 71 business, 7 TU and 3 Central Government).

37. 97% (308) of respondents agreed that the Code will require regular review.

Question 8: If you have answered 'Yes', would 5 years be the right frequency or would you suggest an alternative frequency?

38. Respondents provided a mix of review timings for both the Code and the Annex. Whilst generally the Annex was considered to require a regular annual review most respondents suggested the Code should be reviewed after two to three years.

39. However, to a large extent business respondents took the view that whilst the Code, if delivered on the ground, should deliver the policy intent the proof would be seen in how it impacts in practice. Business respondents therefore generally considered it appropriate for HSE to monitor the implementation of the Code and undertake an initial early review to ensure it is delivering the necessary requirements.

40. *In response to these comments we will:*

- ***Monitor the use of the Code in its first year and carry out an early review in 2014.***

Questions 9 to 12 were targeted at LA health & safety regulators and their professional bodies.

Question 9: Does the Code adequately set out how LAs can achieve a consistent approach to regulation via risk based targeting?

41. 238 LAs responded to this question; 60% agreed that the Code adequately sets out how LAs can achieve a consistent approach to regulation via risk based targeting.

42. The majority of LA respondents suggested that supporting guidance would assist with consistency e.g. on targeting, risk rating, intervention planning, measures to identify where risks are not being effectively managed and the range of interventions available (see paragraphs 11 & 15).

Question 10: Does it provide for sufficient local flexibility?

43. This question was answered 233 times by LA respondents; 52% (122) of respondents agreed that the Code provides sufficient local flexibility.
44. Of those who agreed, the majority recognised that the Code allowed flexibility to deal with local priorities/issues where there was evidence that risks are not being effectively managed. Respondents also welcomed the recognition within the Code of their wider role in public health. Some LAs also thought that further guidance would be useful on criteria for judging poor performance (see paragraphs 11 & 30).
45. Of those who disagreed, the vast majority provided comments on the contents of Annex A and proactive inspections, with most considering that there should be greater emphasis given in the Annex to local priorities/issues.

Question 11: Have we provided sufficient direction for LAs to target their resources based on risk?

46. This question was answered by LA responders 237 times; 61% (145) of respondents agreed that the Code provided sufficient direction for LAs to target their resources on the basis of risk.
47. Those that disagreed did not support the idea of having a list of activities/sectors for proactive inspection with some concerned that this may divert attention away from local priorities.
48. The majority of respondents considered that further guidance would be helpful to assist LAs to target their resources, particularly to allow them to address local priorities in a consistent manner (see paragraphs 11 & 15).

Question 12: Does the Code provide sufficient guidance on the management of regulator competence?

49. This question was answered 231 times by LAs; 71% (164) of respondents agreed that the Code provided sufficient guidance on regulator competence.
50. Some respondents raised concerns around maintaining competency and suggested clearer definitions and details of how competency should be maintained. They also suggested that reference was made to guidance/resources for health and safety provided by HSE and other bodies (e.g. IOSH) (see paragraphs 53 & 54).

Questions 13-15 were targeted at business and their representative bodies.

Question 13: Is there more that the Code can say about ensuring that businesses take responsibility for managing the risks that they create?

51. This question was answered by business respondents 67 times; 55% (37) of respondents agreed that the Code said all that was necessary about ensuring businesses take responsibility for managing the risks that they create.
52. The respondents who thought the Code could say more suggested further references were made within the Code to include worker responsibilities and involvement; access to competent advice or external expertise; the guidance on risk management on HSE's website and the Occupational Safety & Health Consultants Register (OSHCR).
53. Of those that thought the Code sufficiently covered this, a small number thought it would be helpful to publicise the Code to businesses to reinforce its messages (see paragraphs 34 & 35).
54. ***In response to these comments we will:***
- ***Include references to the importance of worker responsibilities and involvement, access to competent advice or external expertise and sources of assistance; and***
 - ***Include reference to other sources of advice and guidance (e.g. the HSE website, the Occupational Safety & Health Consultants Register (OSCHR) and IOSH).***

Question 14: The Code sets out how LAs can achieve a consistent approach to regulation via risk based targeting using specified guidance material. Will this bring about the desired consistency of approach?

55. Question 14 was answered 72 times by business respondents; 53% (38) of businesses agreed that the Code will achieve a consistent approach.

Question 15: If you have answered 'No' what more is needed?

56. This question was answered 33 times.
57. Generally, SME and micro business representatives recognised that having a uniform standard that applies to all LAs would provide for a more consistent approach. Many considered the Code as having the potential to provide consistency but that other mechanisms such as regular monitoring and increased competence were required to ensure that it did. However, there was a recognition that the necessary changes in LA inspection behaviour will

be delivered over time and through cultural changes to how LAs work.

58. Large multi-site business representatives had reservations that the Code would have the desired outcome, thus the early review in 2014. A small number of responders also suggested that the Code should place greater emphasis on encouraging participation in Primary Authority schemes (see paragraph 30).

Question 16: Do you have any other comments on the ideas and proposals explored in this document?

59. This question was answered 215 times.

60. Comments were made by both business and LAs welcoming a clear and concise Code. Other themes within the responses largely reflect comments made elsewhere and included the need for further guidance and the importance of monitoring compliance with the Code.

61. A number of other issues were raised on which we were not consulting, e.g. the Health & Safety (Enforcing Authority) Regulations. We will feed these comments into our on-going review of those policy areas.

Question 17: Is there anything you particularly like or dislike about this consultation?

62. This question was answered 180 times.

63. LA comments specifically relating to the consultation included some concerns that the timing and length of the consultation (10 weeks) did not allow sufficient time for responses to be formally agreed within an LA.

64. Business comments specifically relating to the consultation were largely positive, appreciating its simplicity and straightforwardness as well as how widely the net was cast to solicit replies. However, some did not like the yes/no format as they considered that this can mean a negative response is provided when actually the principle is supported.

65. TU's expressed a particular concern that the consultation questions were aimed at LAs and business and did not specifically seek views of employees and their representative bodies.

66. The other comments largely reflected the comments made under other sections.

67. Finally, there was a helpful suggestion of including a consideration of how to bring LA elected members on board once the Code is launched.

Summary of amendments to the Code

Section 1: Roles & responsibilities

- Include references to the importance of worker involvement, access to competent advice or external expertise and sources of assistance; and
- Include reference to other sources of advice and guidance (e.g. the HSE website, the Occupational Safety & Health Consultants Register (OSCHR) and IOSH).

Section 2: A risk based approach to regulation

- Provide more emphasis and information on the Primary Authority Scheme and its role in ensuring consistency;
- Clarify the requirement for Primary Authority inspection plans to follow the principles outlined in the Code;
- Reinforce the role of advice and support in encouraging better risk management by business; and
- Make it clear that we will provide supporting guidance and keep this under review based on our experience and implementation of the Code.

Section 4: Assurance on meeting the requirements of the Code

- Include reference to the role of LA liaison groups.

In addition we will:

- Publish a list of activities/sectors appropriate for LAs to target proactive inspection.
- Work with interested business groups to publicise the Independent Regulatory Challenge Panel.

The amended Code will be published on the HSE website. We will monitor the use of the Code in its first year and carry out an early review in 2014.