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| Health and Safety Executive | | Operational Circular | |
| | | OC 130/4 | |
| Review Date | 29/07/2012 | Open Government Status | Fully Open |
| Version No & Date | 1: 29/07/2002 | Author Unit/Section | FOD FSU |

Target Audience:
All HSE Inspectors

[ENFORCEMENT MANAGEMENT MODEL \(EMM\)](#)

FRAMEWORK FOR DRAFTING ENFORCEMENT GUIDANCE

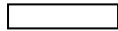
This OC provides guidance on drafting enforcement guidance in a manner that makes it readily compatible with the EMM. The appendices detail a common framework for the production of guidance, and also the review and monitoring procedures that should be followed.

1 This document describes a common framework for HSE authors to follow when preparing enforcement guidance in line with the [Enforcement Management Model \(EMM\)](#). It also describes the procedures for implementing and monitoring these arrangements. The framework is described in [Appendix 1](#) to this document, and the procedures for FOD are described in [Appendix 2](#).

2 Enforcement guidance assists inspectors in making consistent enforcement decisions. It should be distinguished from other guidance that does not include enforcement advice.

3 The purpose of this document is to assist those authors who write enforcement guidance. It sets out roles and responsibilities, the framework authors should follow, and monitoring arrangements to ensure there is a consistent approach across HSE when producing enforcement guidance that reflects the EMM principles.

Date first issued: 29 July 2002
(FOD/220/1034/2002)
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APPENDIX 1 (para 1)

FRAMEWORK WORK INSTRUCTION

Introduction

1 Enforcement guidance is intended to provide sufficient information for inspectors to make robust, consistent enforcement decisions, based on the principles and expectations of the Commission's Enforcement Policy Statement. It is not usually meant to specify an expected enforcement action. Rather, it is to provide sufficient reasoned information, under each of the relevant headings, to help the inspector apply the [EMM](#).

Layout

2 The following information should be included in any guidance that covers enforcement. Authors do not have to follow these headings strictly, as long as the information explained beneath each heading is covered.

Overview of the issue

(1) The overview of the issue should simply describe the risk to which the guidance applies. The hazard should be clearly stated, for example, a machine or item of work equipment, a process, a work activity. These should be described so that an inspector, who is unfamiliar with them, can understand them and know the relevant terminology. Authors should include how enforcement action is linked to inspection/investigation strategies (ie prioritising hazards).

Actual risk

(2) Actual risk, ie the situation encountered by the inspector and informed by an understanding of generic risks in the sector/activity, is judged by the inspector concerned. Enforcement guidance should provide sufficient information to enable inspectors to identify the level of actual risk.

(3) To identify actual risk, inspectors must understand the hazard, the likelihood of injury from the work activities or undertaking at issue, the legal standards expected (benchmark) and the effect of those standards. These are covered below ([subparas 10-15](#)).

(4) Inspector's understanding of actual risk is informed by authors effectively communicating information on accident/injury data, probability of incidents/injuries/ill health, and the consequences, both when safeguards have been in place and when they are absent or are deficient.

Safeguards should be clearly explained, and may include information about workplace precautions, risk control systems and associated management arrangements.

(5) Authors should, where appropriate, advise on risks of serious injury that require immediate action. Inspectors will decide on the basis of the actual circumstances, but authors' knowledge of their sector or analysis of data will help inform that decision, eg certain risks, such as entry into confined spaces, are known to regularly give rise to a risk of serious personal injury.

(6) Where this information is already available in sufficient detail to inspectors, authors should make clear reference to the appropriate guidance. However, authors may wish to include a summary of the main points, which may be helpful.

(7) As a minimum, authors should provide information on what the effect of the absence of, or defect in safeguards could be. It may be provided in a format which allows the inspector to make an informed judgment on the risk gap, eg in terms of likelihood, consequence and extent. Alternatively it might be in a format which allows the inspector to make a judgment about the scale of the failure to meet a compliance or administrative arrangement, or to adhere to the relevant permissioning regime. This information will guide the inspector to the appropriate part of the EMM. For example, a sector may advise that, based on accident data a particular machine with deficient guarding would give rise to possible significant injury. Alternatively that a risk assessment might be inadequate if it doesn't address certain key issues.

(8) Where data is poor or non existent, inspectors still require guidance. Authors should advise on what basis they estimate actual risk.

(9) Some scenarios which might be considered in enforcement guidance can be complex, but the guidance should aim to be as straightforward as possible. Where there is the potential for multiple defects, the guidance should show how they can interact, and impact on the actual risk. The guidance may include various commonly encountered scenarios where one or more precautions are absent. This should provide an illustration of a range of actual risks. However, these scenarios must be tightly prescribed, in order to be of any aid to the inspector when applying the EMM.

Benchmark

(10) The benchmark reflects the minimum legal standard the duty holder should meet. Two main factors form the benchmark - the law, and any guidance on how a duty holder may meet its legal duties.

(11) The EMM describes the benchmark in terms of what risk remains once the benchmark has been achieved. This can range from nil/negligible likelihood of harm, through to a possible likelihood of serious personal injury or health effect. So the information about the benchmark should be presented in a manner which guides the inspector to the standard(s) that are relevant to a given scenario.

(12) For example, the benchmark for falling in construction is set by the Construction (Health, Safety & Welfare) Regulations 1996 (C(HSW)). These state that '...suitable and sufficient steps shall be taken to prevent, so far as is reasonably practicable, any person falling'. If the scenario being considered is a fall from a working platform, then inspectors should be referred to the schedule, which deals with their construction. Alternatively, if nets are the relevant standard for a given situation, then the guidance about the benchmark should be drafted so as to guide

the inspector to the standard that deals with nets - explaining in the process its status, eg defined, established, or interpretative.

(13) The enforcement guidance should also state what is the remaining 'likelihood' and 'consequence' if the dutyholder does what they are supposed to do. In the case of working at height generally this may be 'Nil/Negligible' if all safeguards are followed, thereby preventing injury. However, in short term roof work the benchmark may be 'remote' risk of 'significant injury' because the safeguards, that are accepted as being sufficient to meet the SFAIRP benchmark in the C(HSW) regulations, may still allow this likelihood and consequence to occur.

(14) For compliance and administrative arrangements, the enforcement guidance should state the relevant law, standards and published guidance. Once the minimum legal standard is expressed the inspector should be able to compare the dutyholders actual performance with that standard. This will enable an enforcement decision that is proportionate to the level of compliance and the seriousness of the legal breach.

(15) Guidance on permissioning regimes should be written in a format which allows the inspector to build on the core information in the EMM on these issues.

Risk gap

(16) Inspectors will determine the risk gap from the actual risk and benchmark. Authors may wish to give tightly prescribed examples of the risk gap for specified situations, and also where multiple defects occur. However, it must be made clear in the guidance that the examples are illustrative only. The inspector must come to an enforcement decision that is based on what they find in a given situation.

Initial enforcement expectation (IEE)

(17) Inspectors will reach the IEE based on the sound guidance provided by authors.

(18) The IEE is the **initial decision** solely reflecting, and proportionate to, the levels of risk to health or safety, or the seriousness of any breach of the law. Dutyholder and strategic factors then influence the enforcement outcome.

Dutyholder factors

(19) Enforcement guidance may include information that influences the dutyholder factors, for example, the author's sector may have relevant information on the resources or restructuring of a company nationally that affects ability to deliver improvements. If information about central interventions or recurrent poor/good standards is available this should be included. The author's sector may have taken a policy decision that, when applied locally, will affect the enforcement outcome.

Strategic factors

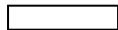
(20) Strategic factors qualify the decision by ensuring that any public interest and other, wider issues are taken into account.

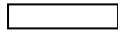
(21) Enforcement guidance should, where appropriate, include reference to the following:

- (a) public interest: guidance on what a reasonable person would expect from HSE as a response to the situation described in the document. Information about the wider benefits on risk reduction or targeting the most serious risks.
- (b) vulnerable groups: guidance on vulnerable groups where risks may be increased or the public interest justifies particular action.
- (c) initial and long term impact on client: guidance where national factors are an important consideration.
- (d) impact on other dutyholders: guidance where a particular course of action on one client could have both a positive or negative impact on other clients in related areas or activities. An example would be major employers or public services.
- (e) functional impact: guidance where the net benefit of enforcement action may be influenced by the national picture.

Enforcement conclusion and action plan

(22) Although the enforcement conclusion and action plan are matters for the inspector considering enforcement action, the guidance may request feedback on conclusions and the outcomes of actions plans. Authors may require this information to help inform and develop future strategies or guidance.





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APPENDIX 2 (para 1)

FOD MANAGEMENT ARRANGEMENTS FOR PREPARING ENFORCEMENT GUIDANCE

Policy

1 Enforcement guidance should be consistent with the principles of the EMM. These are described in the Framework Work Instruction at [Appendix 1](#).

2 Authors should include as much information as necessary to help inspectors apply the principles and expectations of the HSC Enforcement Policy Statement when coming to an enforcement decision. This will produce guidance in a consistent format easily recognisable to readers.

Roles and responsibilities

Divisional directors

3 Divisional directors have overall responsibility for the quality of guidance produced by authors within their command.

Heads of sector/unit

4 Heads of Sectors, HU, SU and HQ Units are responsible for the strategic direction and planning of guidance. Their role is to oversee the inclusion of EMM principles in line with this framework in appropriate sector guidance.

5 Heads of Sectors and Heads of Units are the quality managers. They are also responsible for its practical application and providing constructive feedback on this framework document.

Authors' role

6 The Role of authors is to produce enforcement guidance, as appropriate, that meets the framework described. They are responsible for developing benchmarks and advising inspectors on risks and other issues to enable them to take consistent enforcement decisions.

Monitoring and review

7 The quality managers (see para 6 above) will monitor guidance produced to ensure it meets the standards laid out in this guidance.

