



Health and Safety Executive		Operational Minute	
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To
All HSE Inspectors

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

DISCUSSING ENFORCEMENT DECISIONS IN PARTICULAR CASES

The [Enforcement Management Model](#) is now available publicly, and this may give rise to representations about the detail of enforcement decisions in individual circumstances. This OM gives advice on responses that may be made when enforcement decisions are challenged by reference to the EMM. It does not cover advice on responding to requests for disclosure of EMM forms, which is given in [OM 2002/113](#).

Background

1 HSE faces increasing demands to explain its actions, and its inaction, to dutyholders, injured persons, relatives of those killed or injured by work activities, pressure groups and others. HSE is committed to responding positively to these demands, and to letting people know what we are doing and generally why, whenever we can.

General principles

2 In accordance with our policy, as set down in HSE38 *The Health and Safety Executive Working with Employers* and the [Enforcement Concordat](#) (Enforcement Handbook, Chapter 1, Operational Supplement 5), we should explain to the dutyholder what enforcement action we are taking and why. "Why" would generally include how the action we are taking meets the HSC Enforcement Policy Statement (EPS) (File 130) - particularly the principles of proportionality and targeting.

3 We will explain why we are serving Notices and discuss this with the recipient. HSC 14 *What to expect when an Inspector Calls*, (File 200) and the documents in para 2 above, refer. When prosecuting, we will also ensure that prosecution meets the tests of evidential sufficiency and public interest. We will also advise those affected by an accident of the outcome of our investigations. HSE leaflets HSEEW010 AND HSESCO020 *Health and Safety Executive and You - after an accident* (File 208) refer.

4 Inspectors should be as open as possible in providing information to bereaved families. HSE leaflet *Advice and Information for Bereaved Families* (File 208) refers, as does [OM 2002/105](#) - particularly Appendix 4.

5 However, this does not mean that we will discuss the detailed steps in our decision making process. The HSC Policy Statement on Open Government, para 5(c) states that we will, subject to relevant exemptions, give information on the reasons for administrative decisions, to those affected by the decisions. However, the policy goes on to say that reasons need not be given for decisions on whether to take enforcement action.

Effect of the EMM

6 The use and public availability of the EMM does not change the above principles, and our response should be no different. Requests for information, or detailed discussion of our decisions and the use of the EMM, should be acknowledged but resisted. We should not generally go into the detail of the individual steps taken in our decision making in any particular case. Inspectors should always be prepared to explain what action we are taking, and why. This would usually be by reference to the law (and associated ACoPs and guidance), and to how our action meets HSC's EPS. Inspectors will wish to refer to proportionality and the extent of the risk, and to targeting the principal sources of risk.

Requests

7 Requests for detailed discussions on our enforcement actions may come from a number of sources. We anticipate two main types of request:

- (1) from injured persons, bereaved families, pressure groups, campaigning organisations, and others outside HSE who feel we should be taking stronger (more punitive) action in a particular case, eg those who wish us to prosecute following their accident or complaint
- (2) from dutyholders, their legal representatives, or dutyholder organisations who may use the model in seeking to argue that our enforcement action against them is too harsh a response, eg we can anticipate a solicitor taking their own route through the model as a means of arguing that their client should not be prosecuted.

Actions by inspectors

8 Inspectors should continue to respond in line with the general principles above. The following paras may also help, and may be used, as appropriate, in responding to these challenges:

- (1) It is crucial that inspectors' discretion is not fettered by artificially constraining all decisions to the model. Whilst the EMM provides a framework for ensuring that all matters in the EPS are considered, it is not, and cannot be, a definitive absolute decision making device in all cases.
- (2) Enforcement decisions are complex, requiring consideration of many issues and variables associated with the specific circumstances of the case. The EMM is a simple two-dimensional linear model, and so cannot truly capture all the nuances and complexities of

discretionary decision-making in all circumstances.

(3) The EMM is not a rigid decision making program that provides an 'answer' when given a set of inputs. Enforcement requires judgement and the EMM is just a framework that helps us exercise that judgement, whilst consistently considering the factors within the EPS.

(4) The EMM neither constrains, nor directs, the EPS. It is not meant to direct the policy - but to reflect it. Neither does it direct enforcement in any particular case. The EMM provides a framework for improved consistency in considering the factors in the HSC Enforcement Policy Statement.

(5) The purpose of the EMM is to ensure that the EPS is considered. It is against the EPS that our decisions must be measured - not the EMM. Within the model there is an inbuilt strategic consideration which requires an inspector to consider whether the proposed enforcement action meets the principles and expectations of the EPS. There is also a management review process which ensures that these principles and expectations are met. This may mean that the initial enforcement action indicated by the model is modified, so that the actual enforcement action that is taken, is in accordance with the EPS

(6) The EMM requires judgement at each step through its framework. It is possible that those with particular interests might make a judgement that is different to that made by the inspector - who is an independent regulator. This is to be expected, particularly since dutyholders, and those affected by the way undertakings are run, may have their own viewpoint, which may be reflected in the judgements they make.

(7) HM Inspectors apply the EMM principles to all enforcement decisions however, as a public regulator, we have finite resources and it is simply not possible or practical to expect Inspectors to formally apply the EMM to all enforcement decisions and to record the fact. Inspectors are required to formally apply the model and record their decisions in certain circumstances, eg following the investigation of fatal accidents.

(8) Dutyholders are encouraged to let inspectors know of any factors which might influence their enforcement action. However, this cannot delay taking any immediate action that is necessary, eg to deal to deal with serious risks to health and safety.

(9) (Particularly relevant where we are proposing to prosecute and it is suggested that lesser action, such as a notice or a letter, is sufficient) - The EPS expects that we will take appropriate action to deal with serious risks (eg by Prohibition Notice), to secure compliance (eg by letter or Improvement Notice), AND will also consider action to bring dutyholders to account where appropriate (eg by prosecution). These actions are not mutually exclusive and there is no hierarchy. A Notice is not a lesser replacement for a prosecution. They are intended to deal with different aspects of enforcement, eg securing compliance and bringing dutyholders to account.

(10) The model does not determine what we investigate, or the health and safety issues Inspectors consider in any given situation. We cannot look into every aspect of every health and safety matter arising from every activity of a dutyholder, and therefore we target and prioritise our inquiries. The priorities will be guided by HSC/E programmes, and the incident selection criteria set out in the EPS - and not

by the EMM.

Action when raised in Court

(11) There may be attempts by advocates representing the accused to use the EMM in Court as a way of seeking to minimise and mitigate the actions of their guilty client. This may be by suggesting that HSE's own model indicates we should not be prosecuting their client, but that we should be taking lesser action (eg letter or notice), - and they may argue that prosecuting may therefore be against HSE's own instructions! If we have the opportunity to comment then, in addition to the above, we should explain that it is the EPS and CPS Code, that determine whether we prosecute, and that the EMM is there as just a framework to help us address the issues in the EPS. In any case, in our initial address when presenting our case to the Court, we should always be advising the Court that the prosecution is in accordance with the EPS and is in the public interest. In particular we should also have indicated the risk associated with the offence and explained how prosecution is an appropriate and proportionate response to bring the dutyholder to account.

Further advice

9 The above should enable inspectors to deal with all case-specific requests, if necessary in discussion with line managers within their division. If questions arise about the general intent and purpose of the EMM then please seek advice from FOD FSU.

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