

National Local Authority Enforcement Code – Supplementary Guidance

1. This supplementary guidance has been produced to help Local Authorities (LAs) understand and meet the requirements of the Code by addressing several of the points raised by LAs during the consultation.

a) LA regulatory interventions and the role of inspection

2. LAs are responsible for regulating around 1.6 million work places and it is neither efficient nor proportionate to deliver a regulatory function based on inspection of individual work places – particularly to those lower risk premises that are already managing their risks effectively.
3. LAs can use a range of techniques (interventions) to improve their impact and reach. These include the provision of guidance and raising awareness (both generally or targeted), working with local business groups etc. Some interventions may be appropriate for individual LAs, others work better with joined up approaches such as within a region or in collaboration with other regulators. Guidance on the range of interventions used by health & safety regulators is available at: <http://www.hse.gov.uk/lau/lacs/67-2-annexc.htm>
4. One of the interventions used by regulators is proactive inspection. Proactive inspection is effective if used in the right circumstances – i.e. where individual site-specific contact with a duty holder is necessary to influence the management of risk. However, it is the most resource intensive intervention for both LAs and businesses and should be limited to the highest risk premises. Equally, it is not considered an effective use of public (or business) resources to inspect comparatively lower risk premises that are managing their risks effectively.
5. Alongside the Code, HSE has published a list of higher risk activities falling into specific LA enforced sectors. Under the Code, proactive inspection should only be used for the activities on this list and within the sectors or types of organisations listed, or where there is intelligence showing that risks are not being effectively managed (see section e). The list is not a list of national priorities¹ but rather a list of specific activities in defined sectors to govern when proactive inspection can be used. However, if a business carries out an activity on this higher risk list, it does not mean that it must be proactively inspected: LAs still have discretion as to whether or not proactive inspection is the right intervention for businesses in these higher risk categories.
6. In most cases, LAs will rate premises based on business's health and safety performance² in order to determine their relevant intervention priorities. It should not be used to determine proactive inspection interventions – the Code supersedes all previous guidance in relation to proactive inspection.

¹ As outlined in paragraph 16 of the Code, HSE will issue a list of national priorities to inform LA regulatory intervention planning

² <http://www.hse.gov.uk/lau/lacs/67-2-annexf.htm>

b) Dealing with matters of evident concern (MEC)³

7. There will be other reasons that LAs undertake site visits to businesses, for example food hygiene or licensing, and there will be circumstances when they may become aware of a significant health and safety issue. LAs should deal with such matters at the time of the initial visit wherever possible and factor it into their assessment of how the company is managing its risks, rating the premises accordingly.
8. LAs should monitor such MEC's for intelligence purposes (see section e).

c) Delivery of local and national priorities

9. The Code provides flexibility for LAs to address local priorities alongside the national priorities set by HSE. Having identified their evidence-based priorities LAs should address them using the whole range of regulatory interventions but preserve proactive inspection only for the activities/sectors specified by HSE or where there is evidence that risks are not being effectively managed (see section e below and paragraphs 25 & 26 of the Code).
10. LAs have advised that local priorities often emerge from investigations. During such investigations, questions can arise as to whether the failings leading to the incident are common in other similar premises. However, in such circumstances, LAs should not simply inspect all equivalent premises to determine whether this is the case. LAs could use the intelligence to raise awareness of the issue e.g. via a targeted information campaign. If the issue is a novel or emerging problem then LAs should alert HSE to the issue so they can consider whether and what national action is needed to raise awareness e.g. via a safety bulletin or alert and possible follow up.

d) The role of LAs in providing advice and support to business

11. In support of local economic development and growth, LAs can provide valuable local support and advice to business, especially new business start-ups. There should, however, be a clear distinction between the provision of useful advice directly to a business, and formal inspection.

e) Identification of poor performers

12. LAs can use a variety of evidence sources to identify poor performers. Of course because they are locally based LAs have their own sources of knowledge e.g. intelligence from previous advisory or inspection visits, including for other regulatory purposes; adverse insurance Reports; a series of RIDDOR reports or complaints that on their own would not merit an intervention based on HSE's selection criteria⁴
13. Where the intelligence of poor performance relates to a business within a Primary Authority arrangement then the first point of contact should be with the relevant Primary Authority.

³ Matters of Evident Concern (MEC) are defined as those that create a risk of serious personal injury or ill health and which are observed (i.e. self-evident) or brought to the attention of LA staff

⁴ HSE Accident selection criteria (<http://hse.gov.uk/lau/lacs/22-13.htm>) and HSE's risk based approach to complaints handling (<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/complaints/index.htm>)