

Enforcement Officials

This Guidance Note has been written to give practical information about enforcement officials, their powers and how to liaise with them.

Who are Enforcement Officials?

HSE Inspectors

~~HSE Inspectors~~ are professional officers who are employed by one of the divisions of the Health and Safety Executive (HSE), and may be responsible for general enforcement within a specific geographical area, or be a specialist in a particular industrial sector. They will only enforce health and safety legislation.

Health and Safety Awareness Officers (HSAOs)

~~HSAOs are specially trained staff whose role is~~ to support HSE's regulatory work, promote health and safety awareness and provide information to employers, employees and others who may be affected by work activities.

Environmental Health Officers (EHOs)

~~EHOs are professional officers who are~~ employed by local authorities to perform a wide range of functions, usually in an enforcement and advisory capacity. Their areas of expertise include food hygiene and food safety, health and safety at work, private sector housing, atmospheric pollution control, nuisances, infectious disease control, drainage, licensing and smoke free legislation.

Technical Officers

~~Technical Officers~~ are specially trained staff whose role is to support EHOs regulatory work, covering the various aspects of environmental health legislation.

Fire Officers

~~Fire Officers~~ are professional officers who are employed by local fire authorities to perform a wide range of functions, usually in an enforcement and advisory capacity. They only enforce fire safety law.

Trading Standards Officers

~~Trading Standards officers~~ are employed by local authorities to advise, enforce the law and prosecute, where appropriate, on a range of subjects including: fair trading; consumer safety; weights and measures; consumer credit; under-age sales.

What powers to enforcement officials (EO's) have?

The EO's powers are laid down within the laws that they are responsible for enforcing. In the field of health and safety for example an EO:

- has the right to enter any workplace without giving notice (though notice is often given where an EO thinks it's appropriate);

- will expect to be able to look at the workplace, the work activities and the management of health and safety and they will check to see if you are complying with the law;
- can take samples and photographs;
- may talk to employees and they're representatives;
- has the power to serve improvement notices and take action if they feel that there is a risk to health and safety which needs to be dealt with immediately.

In short, an EO has greater powers than a police officer and it is a criminal offence to obstruct an EO in the course of their duties.

When could I expect a visit?

An EO could visit your workplace at any time. Most enforcement authorities have a programme of inspections which they carry out in a proactive way. The frequency of these inspections may depend on the perceived risk that the site poses, the number of complaints and accidents that have been reported, or simply the number of EOs that are available to do the work. Some sites may not have seen a routine inspection for several years. Others receive routine visits at least annually.

What should you expect of the EO?

You may expect the EO to announce their arrival on site, although you will not necessarily have been given notice of the visit. Whether you have been notified of the visit or not, you and your staff should be as co-operative and helpful as possible. An EO should always carry evidence of their authorisation and identity. You should ask for evidence of this at the beginning of the visit to ensure that they are not bogus officials!

The EO should report back to you on what they have found on site. If they believe that there are significant health and safety risks on site, they may report in writing with an Improvement or Prohibition Notice. At the very least, the EO should conclude their visit with a verbal report of what they have found and their intended course of action.

If an EO has decided that there are sufficient grounds for considering a prosecution for a breach of the law, they are legally obliged to caution an individual whom they are questioning. If they fail to caution an individual, the evidence that an EO has gained may not be used in any subsequent court case.

Information to Employees / Representatives

An EO will check that employers have arrangements in place for consulting and informing employees or their representatives on health and safety matters.

Where possible and EO will speak to employees or their representatives during visits. Employees / representatives must be given the opportunity to speak to the EO in private if they wish.

An EO may provide employees / representatives with certain information where necessary for the purpose of keeping them informed about matters which affect their health and safety. The type of information provided may include:

- Matters which the EO considers to be of serious concern;
- Details of any enforcement action taken; and
- An intention to prosecute the business (not before the employer is informed).

Enforcement Action

On finding a breach of legislation an EO will decide on what action to take. This will depend on the nature of the breach.

An EO who has undertaken a health and safety visit has the following courses of action available to them:

No Action – A satisfied EO will usually do nothing. Keep a record of any reports and or verbal ~~comments~~ as these may prove to be useful in the future.

Informal - For minor breaches the EO may tell the employer verbally and in writing, if requested, ~~what they~~ are doing wrong and what needs to be done to comply with the law. They will distinguish between what is a legal requirement and what is best practice advice.

Improvement Notice - For more serious breaches of legislation the EO may issue an improvement ~~notice which is a formal~~ notice to tell the employer that they MUST do something in order to comply with the law.

The notice will give the following information:

- What needs to be done;
- Why it needs to be done;
- When it needs to be done.

The time period in which action has to be taken will be at least 21 days to allow the employer to appeal to an Industrial Tribunal if they wish.

The EO can recommend further legal action if the improvement notice is not complied with.

Prohibition Notice - Where an activity involves a serious risk of personal injury a prohibition notice ~~may be issued~~. This notice will prohibit the activity immediately or after a specified time period and not allow it to be resumed until remedial action has been taken. The notice will explain why action is necessary and inform the employer of the right to appeal to an Industrial Tribunal.

Prosecution - For serious breaches an EO may consider it necessary to initiate a prosecution. ~~Decisions on~~ whether to prosecute are decided against the HSC's Enforcement Policy Statement. Health and safety law gives courts considerable scope for punishing offenders, see fines below.

Interview Under Caution

~~If an EO believes an individual~~ or a company has committed an offence, it will invite the suspect to an interview under caution. This is an interview conducted pursuant to the provisions of the Police and Criminal Evidence Act 1984 and is often referred to as a PACE interview.

In the case of a company, it will be interviewed through a company representative. The representative will be someone senior in the company and must be authorised by the company to be interviewed as its representative. PACE interviews are usually tape recorded.

At the start of the interview the EO will caution the suspect by saying: "You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

It is important when a company representative is interviewed that it is made clear the caution is being given in respect of the company.

It is recommended that you seek legal advice and/or assistance should a PACE interview, prosecution or prohibition notice be pursued by the EO.

Formal Cautions

~~A formal caution~~ is a statement by an EO that is accepted in writing by the dutyholder, that the dutyholder has committed an offence for which there is a realistic prospect of conviction.

Formal cautions are used only in exceptional circumstances when the public interest firmly weighs against prosecution. Examples might include when court appearance would be likely to have a bad effect on a victim's health, or the accused is elderly or was suffering significant physical or mental ill health at the time of the offence.

Appeals

The appeal process will be explained on the back of the notice. The employer will be told:

- How to appeal, and given a form with which to appeal;
- Where and within what period an appeal may be brought; and
- That the remedial action required by an improvement notice will be suspended while an appeal is pending.

Fines

A failure to comply with an improvement or prohibition notice, or a court remedy order carries a fine of up to £20,000, or 12 months imprisonment or both.

Unlimited fines and/ or 2 years imprisonment may be imposed by higher courts.

For any other questions or queries regarding enforcement officials and their powers please contact the Health and Safety Helpline.

References

- Health and Safety at Work etc. Act 1974
Available from the Stationery Office (HMSO) - Tel: 0870 600 5522
- What to expect when a health and safety inspector calls: a brief guide for businesses, employees and their representatives (HSC14).
Available from HSE Books – Tel: 01787 881165

Further Information

<http://www.hse.gov.uk/enforce/index.htm>

<http://www.lbro.org.uk/>

<http://www.food.gov.uk/enforcement/>

<http://www.berr.gov.uk/whatwedo/consumers/enforcement/trading-standards/index.html>

<http://www.communities.gov.uk/corporate/>