



Chartered
Institute of
Environmental
Health

Public consultation on a National Local Authority Enforcement Code – Health and Safety at Work, England, Scotland and Wales

Response to the HSE consultation

March 2013

National Local Authority Enforcement Code Consultation Questions

Q1. 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?

Whilst the need to reduce unnecessary burdens on business in the current economic climate is fully recognised, there remains a statutory need to protect employees and other persons affected by work activities. Accepting this, a risk based approach to proactive inspection is supported. However feedback from Chartered Institute of Environmental Health (CIEH) members suggests that there is currently little proactive inspection of genuinely low risk businesses on health and safety grounds, and this appears to be at odds with HSE data.

Local Authorities (LAs) are already implementing LAC 67/2 (rev 3) to target interventions however, it is not clear where LAC 67/2 (rev 3) fits into the proposed National Code and this requires clarification.

Furthermore, the CIEH has seen no substantive evidence that demonstrates that proactive inspections impose a burden (unacceptable or otherwise) on business. Indeed, feedback from the food safety area suggests that small businesses in particular welcome inspections as a source of advice. We, therefore, fail to understand how, in the days of joint food and health and safety inspections, following Lord Young's report, that the same inspector visiting premises on the same day can be seen in such diametrically opposed ways by the same businesses.

It is acknowledged that CIEH feedback about inspections is anecdotal; however, it makes the point that good information needs good validation. It has been suggested that there may be a number of reasons for the apparent continuing proactive inspection of low risk premises including inaccurate data entry, coding issues in different software systems or a need to record linked activities. An example of the complexity of data collection can be seen in that (in some cases) a Category A inspection may drop down to a B once inspected, but the software reports that a Category B premises was inspected when in reality it was indeed a Category A.

Another important reason for the perception that Local Authorities (LAs) inspect relatively low risk businesses is the fact that the Health and Safety (Enforcing Authority) Regulations 1989 dictate which sectors/activities fall to LAs. These regulations are long overdue for review as we believe they are outdated in today's landscape. Post Löffstedt, HSE has reviewed the sectors that it considers to be high risk. As a result, the risk gap between businesses that HSE inspects and those that LAs inspect is increasing. We would therefore welcome an early review of these regulations as this is a matter of concern.

It is also important to recognise that at the local level many officers will have shared enforcement duties. These might include health and safety, food safety, infectious disease control and a range of public health activities. For the local authority there are benefits in sharing skills and systems across disciplines rather than rigid silo working, not least in building intelligence about the local community and its businesses. As a consequence the requirement to strictly segregate data recording may well create difficulties for LAs.

Beyond issues at an individual LA level the complexity of obtaining accurate data from multiple sources using different computer systems is well recognised across a number of Government organisations. Ensuring accuracy of reported data will be essential when such information is to be the basis for policy decisions and follow up action e.g. "naming and shaming" or for construction of "league tables"

Whilst it is hoped that the Government's desired outcomes can be achieved through engagement and partnership there should also be consideration of and clarity around appropriate and proportionate sanctions for failure to comply with the Code. In determining such courses of action the impacts on national/local regulator relationships will need to be born in mind.

Q2. Is the scope of the National Code sufficiently defined?

Yes (Generally)

Please provide comments in support of your answer.

The Code details the key areas of expectation i.e. the 4 objectives for enforcement. However some further clarification is required, particularly in the following areas:

Section 1- Roles and responsibilities

Regulators

The focus on the need for LAs to ensure that they have sufficiently competent and appropriately supported staff to carry out the required tasks is welcomed. However it is disappointing that unlike the previous Section 18 Standard there is no mention of "capacity" to carry out required tasks. This will be a critical factor given that the main focus of the Code is on proactive inspection yet the expectation is that Local Authorities will carry out the full range of health and safety interventions. Further guidance on resourcing and other interventions would assist in ensuring that there remains sufficient capacity in the system to carry out the full range of activities.

Professional bodies

Para 15 page 8 talks about the role of Professional Bodies in training, education and continuing professional development (CPD). However the CIEH and Royal Environmental Health Institute of Scotland (REHIS) systems are not and should not be considered to be the only means of entry or maintenance of competence for Health and Safety inspectors in LAs. The role of employers in this area is crucial - how will initial and ongoing competence be measured? Will it be through mandatory RDNA assessments and inter-authority auditing? CIEH takes the view that this should be the case.

It is also worth noting that at the present time there is no minimum standard for health and safety regulators to meet before they are deemed competent. This is at odds with the approach taken in food safety regulation, which is more prescriptive. We would welcome a more prescriptive approach to assessing competency for health and safety regulators.

Q3. What are your views on the risk based approach proposed?

The primary responsibility of business to manage the risks it creates is clearly identified. Whilst the Code is particularly targeted at Local Authorities it will also be used by businesses. For clarity it might be useful to define the terms of hazard, control, risk and harm to ensure all readers have a common understanding of the meanings.

It is helpful that the document considers not only nationally recognised specific hazards but also recognises that the relative effectiveness of local business controls can create risks at a local level, regardless of the quality of the management systems.

The role of the regulators in supporting businesses to achieve compliance is understood and in particular the need to target scarce resources at highest risk operations. Similarly it is well understood that a regulator has a range of tools available to improve compliance and that these should be carefully selected on a case by case assessment. However the main thrust of the Code appears to be on proactive inspections, which risks losing the message about the importance of other types of intervention. As a consequence strengthening the message about the value of these other activities would be valuable. That being said using intelligence and risk assessment to identify intervention requirements of all types is sound.

The use of national intelligence to direct action is supported but if this is to be effective good data will be essential. One particular concern arises from the changes to RIDDOR reporting. This will affect the intelligence base and year on year trends may be less indicative of issues on the ground. In particular the restriction of reporting on injuries to the public (except in case of fatality) seems a retrograde step if the aim is to protect people generally from harmful impacts of work activities and not just employees.

The recognition that local risks may be different to national risks is welcomed. It is generally understood that at the level of individual premises high risk activities can be introduced into what might previously have been a lower risk business. It seems likely that intelligence gaps on these and other changes will increase over time as a result of the limiting of proactive inspections. This suggests that activities are less likely to be preventative and more likely to be reactive i.e. damage/harm will have occurred. Over time the currency of local intelligence is likely to atrophy

The option for a local authority to use its own intelligence and evidence to determine local proactive inspection needs fits well with the localism agenda and is welcomed. However in order to avoid confusion about the appropriateness of local intelligence and to reduce the likelihood of unwarranted appeals to the Independent Regulatory Challenge panel, supporting Guidance on approaches to developing good local intelligence would appear essential to ensure clarity, consistency and transparency for both regulator and regulated bodies.

Looking further into the proposals the risk based approach seems over restricted by the prescription of both sectors and activities where proactive inspection is permitted. Such an approach appears to exclude known problem areas e.g. Legionella hazards are only considered in cooling towers not in other places where problems have occurred such as spa pools; other hazards do not feature e.g. asbestos and slips, trips and falls do not feature. In addition there appears to be little consideration of chronic injuries/ illness e.g. stress, slips, trips and falls and repetitive strain injuries, some of which are likely to increase in times of austerity. How will such issues be addressed? Is the expectation that they will be picked up at a local level for proactive inspection or that they should be the subject of local campaigns? If campaigns are seen as the way forwards then their limitations need to be recognised i.e. that they will only be effective when business has a commitment to health and safety and just needs a nudge to take action.

The section on targeting also considers the arrangements relating to Primary Authority (PA) and in particular Inspection plans. It is not clear how this would fit into LA intervention planning. In other circumstances a PA inspection plan would require LAs to target specific areas to test compliance/improvement. Yet this appears at odds with the prescribed list of activities. Is the intention that these visits should be supported but must not be counted as proactive visits? Should this be the case then the assumption may be that Section 20 powers should not be used and any visit made by agreement. This is likely to compromise any testing of real improvement in day to day activities. Further clarity around this would be useful.

Proportionality

Further clarification would be helpful in this section to ensure consistency of approach e.g. a definition of "Harm". Beyond this a greater explanation of the intent of this section would be useful especially as low or remote risks can lead to significant harms occurring.

Q4. 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)?

Identification of higher risk sectors is useful for targeting of resources and this is a tried and tested approach. However, Local Authorities are already working to the guidance contained within LAC 67/2 (rev 3) and it is therefore unclear whether the intention is that they dovetail or the Code replaces 67/2.

The additional prescription of activities appears much less helpful. If a significant hazard is identified then it might seem logical to tackle it wherever it occurs. Some examples have already been noted i.e. Legionella and spa pools; another could be LPG explosion in outdoor events; Beyond this clarity is also required on the intention of the content under the heading "High risk sectors". For instance the large scale public events section provides the example of "motorised leisure pursuits", does this mean that only this kind of activity can be proactively inspected? Without clarification there is potential for confusion when examples are provided in an otherwise prescriptive document.

It is understood that Annex A will not form part of the Code but will be a linked, separate document. This would allow Annex A to be reviewed on a regular basis and the suggested annual review seems sensible. There must however also be a mechanism to allow other issues to be addressed outside the planned review period, should national intelligence indicate the need.

Q5. What are your views on the contents of Annex A?

Annex A requires clarification in a number of areas.

It is too prescriptive in requiring that proactive inspections only occur in specified sectors and where prescribed activities occur.

Whilst some matters may be picked up based on local intelligence others may not. One example would be the case of falls from height. This is not just an issue for warehouses but can for example be a problem for window cleaning and maintenance activities, particularly where there are shared responsibilities between building owners, employers and contractors. This again might be addressed by clarifying the intent of the descriptors within the High Risk Sector column i.e. are they prescriptive or merely examples?

There are a number of areas that are surprising in their omission as there are clear hazards and risks evident. This includes the beauty sector and in particular use of lasers; the limited focus on the events sector where proactive inspection appears to be the only realistic option and the very limited consideration of activities that lead to chronic conditions. In particular there is little emphasis on work related health issues or support to help people stay in work. Issues that should be considered include stress in higher risk sectors, asthma and dermatitis in for example hairdressing and in cleaning as well as the occurrence of musculoskeletal injuries. It is also suggested that there should be recognition of the need to link with occupational health advice services as proposed by Dame Carol Black's report.

Other concerns relate to the appropriateness of applying the same high risk sectors/activities to all Local Authorities. For example, it is unlikely that issues concerning E coli and buried LPG pipe work will be an issue outside rural authorities. Likewise cooling towers are unlikely to be a significant issue within rural authorities. It is concerning that the implication is that one size fits all.

Most importantly the Annex fails to note that proactive inspections may take place in other sectors and in other activities, based on local intelligence. This needs to be made clear in order to ensure that both regulators and businesses understand where proactive inspections can be expected. A failure to highlight this might cause confusion, particularly for businesses, as the specific details are contained within the main body of the Code and the level of detailed examination of the Code is likely to be variable. The Code should seek to avoid creating unnecessary burdens on both business and regulators as a result of lack of clarity.

Q6. What are your views on the assurance measures proposed for LAs on meeting the requirements of the Code?

It is not entirely clear how assurance will be achieved.

Clearly accurate LAE 1 returns will be essential and HSE needs to have measures in place to ensure this, particularly if "naming and shaming" is proposed

It is identified that as a first stage of action e.g. in the case of missing information or indication of failure to meet Code requirements, HSE will seek to work with LAs to investigate and address issues. However there is little detail on what this will involve, nor on ways in which action might be escalated. Further details would be useful.

Peer review is identified as a mechanism to benchmark performance against the Code and to share good practice and address concerns. The CIEH takes the view that formal inter-authority auditing is the only sure way of setting and delivering a consistent approach.

Summarising, it is believed that introducing a set of national performance indicators for HSE and LAs will greatly improve our collective performance in health and safety regulation. Not only will this assist Local Authorities in prioritising health and safety activities, but it will also provide a transparent system against which performance can be compared.

Q7. Will the Code require regular review in the future?

Yes

Q8. If you have answered 'Yes', would 5 years be the right frequency or would you suggest an alternative frequency?

As this is a new initiative a 5 year period before the Code is reviewed appears too long. Rather a review after 18 months of operation, when data is available to assess impact, seems a better approach. Once the Code is operating satisfactorily then a longer period for review may well be appropriate. Alongside this an annual review of Annex A will be essential and it is suggested that any such review should involve LA partner input.

Questions 9 - 12 are targeted at local authority health and safety regulators, their managers and their representative bodies.

Q9. Does the Code adequately set out how LAs can achieve a consistent approach to regulation via risk based targeting?

No

Please provide some comments to support your answer.

In general the Code is fairly clear in its intent on risk based targeting using national intelligence i.e. based on Annex A (although some deficiencies have been previously noted). Comments have been made on the risk based approach in responses to Questions 3, 4 and 5. However the Code is less clear on the use of local intelligence for evidence based targeting. The Code does not mention LAC 67/2 (rev 3) and therefore it is unclear how all interventions are to be prioritised besides just proactive inspections. As commented in Question 3, further Guidance on developing robust local intelligence might prove helpful. This would be particularly useful in reducing the likelihood of referrals to the Independent Challenge Panel on the basis of "unwarranted" proactive inspections. Such guidance would be helpful in achieving a consistent national approach. Detailed information would also be helpful on the criteria for referral to the Challenge panel.

Q10. Does it provide for sufficient local flexibility?

No

Please provide some comments to support your answer.

The Code provides opportunities for local flexibility however in order to achieve a consistent approach to such flexibility additional guidance on developing (and applying) local intelligence to determine appropriate local activities would be useful. Local Authorities are perfectly placed to react to local issues for example, based on accident data. As such, the Code should give greater significance to local flexibility.

Q11. Have we provided sufficient direction for LAs to target their resources based on risk?

No

Please provide some comments to support your answer.

Whilst the Code provides some direction on targeting additional information is required on information that might infer that risks are not being effectively managed. This is in addition to the previously identified need for guidance on the development of local intelligence. As there are concerns about Annex A and in particular, omissions from it, it is not felt that there is sufficient direction in the Code to ensure resource targeting is properly based on risk.

Q12. Does the Code provide sufficient guidance on the management of regulator competence?

No

Please provide some comments to support your answer.

The Code identifies the importance of ensuring that inspectors have suitable and ongoing competence to exercise the powers granted under their HSWA authorisations. It does not however specify the means to achieve this, though the use of the Common Approach to Competency for Regulators and RDNA and GRIP are mentioned. CIEH notes that RDNA was never established as a means of assuring competence but is a mechanism to identify unaddressed development needs in inspectors. This reiterates the question about how competence can be assured.

It might well be useful to set up a system of external monitoring of competence assessment and the maintenance of competence, in order to ensure that business benefits equally from the use of competent inspectors. In this respect, CIEH takes the view that inter-authority auditing and cross sectoral auditing (HSE of local authorities) should take place.

Professional Bodies are well positioned to contribute to the development of such systems of assessment. Generally it is felt that a more structured and prescriptive system of officer competence requirements should be introduced, rather than just relying on guidance. For example the Food Standards Agency prescribes minimum professional standards and 10 hrs CPD per year. This type of approach would be welcomed.

Given that the Code identifies the essential need for appropriate regulator competence the question also arises as to how HSE might tackle failure of local authorities to maintain competent inspectors. This will be of particular importance in times of budget cuts when there may be a temptation to employ less competent staff in order to reduce employment costs.

Questions 13 to 15 are targeted at businesses and their representative bodies.

Q13. Is there more that the Code can say about ensuring that businesses take responsibility for managing the risks that they create?

Q14. 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?

Q15. If you have answered 'No' what more is needed?

Further general questions

Q16. Do you have any other comments on the ideas and proposals explored in this document?

Whilst the Code is clear that LAs should use the full range of interventions available to inspectors and not just focus on proactive inspections there is a considerable risk that reducing inspection requirements will result in posts being cut. In some cases there is a tendency, with the pressure of reduced budgets, to pare activities to the bone and default to "statutory" duties only. In some cases this may result in the level of proactive inspections being seen as the benchmark. Whilst HSE is clear that LAs need to apply the full range of interventions to ensure good standards of health and safety are achieved, there is a danger that this message may be lost. As a consequence we would urge HSE to communicate this message strongly, not just through the Code.

Q17. Is there anything you particularly like or dislike about this consultation? Please provide comments.

It is disappointing that the time available for response to this consultation has been cut from the standard consultation time of 12 weeks to 10 weeks. In addition the launch of the consultation shortly before Christmas has further eroded the time available for full discussion.

Whilst this variation in long established practice is a matter of concern of greater import is the proposal to launch the Code on 1st April. As the consultation closes on 1st March this appears to give little time for detailed consideration of responses in a matter that is likely to impact on the way that business health and safety controls are monitored by Local Authorities.

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As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish guidance notes and magazines; run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,000 members across England, Wales and Northern Ireland.

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