

**WYRE FOREST DISTRICT COUNCIL  
OCCUPATIONAL HEALTH AND SAFETY ENFORCEMENT POLICY**

**Managing Health and Safety Enforcement**

**REVIEWED MARCH 2008**

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## CONTENTS PAGE

The Policy Statement	3
The Aims, Objectives & Scope of the policy	5
Principles of Enforcement	6
Proportionality	6
Consistency	7
Transparency	7
Targeting	8
Accountability	9
Organising to Deliver the Policy	10
Roles and Responsibilities	11
Arrangements to Deliver the Policy	12
Communicating the policy	12
Delivering the policy	12
Monitoring performance	12
Review	13
Audits	13
Acknowledgements	13
References	13
Bibliography	13
Appendix 1 - Minimum Inspection Frequencies	14
Appendix 2 - Conduct of Inspections	15

## The Policy Statement

This policy describes the principles that form the basis for the enforcement of occupational health and safety legislation within the counties of Herefordshire and Worcestershire. It also contains the organisation and arrangements to deliver the policy.

The policy has the full support and commitment of elected members of Wyre Forest District Council, senior management, the Chief Environmental Health Officers Group (*'Chief Officers' Group*), and other officers who are responsible for implementing the policy.

The policy exists to serve a wide audience. Whilst the greatest use of the policy will be by enforcement officers, the policy is also relevant to managers, elected members, duty holders, the general public and other stakeholders.

The primary purpose of the policy is to comply with mandatory guidance (under revision February 2008) that has been issued by the Health and Safety Commission under Section 18 of the Health and Safety at Work Etc. Act 1974. In the view of the Health and Safety Commission, the following elements are essential for a local authority to adequately discharge its duty as an enforcing authority:

- a) a clear and published statement of enforcement policy and practice;
- b) a system for prioritised planned inspection activity according to hazard and risk, and consistent with any advice given by the Health and Safety Executive and Local Authorities Enforcement Liaison Committee (HELA);
- c) a service plan detailing the local authority's priorities and its aims and objectives for the enforcement of health and safety;
- d) the capacity to investigate workplace accidents and to respond to complaints by employees and others against allegations of health and safety failures;
- e) arrangements for benchmarking performance with peer local authorities;
- f) provision of a trained and competent inspectorate, and,
- g) Arrangements for liaison and co-operation in respect of the Lead Authority Partnership Scheme.

The policy is a valuable tool that can deliver many benefits, namely,

- √ It provides a framework that will promote consistency within and between authorities
- √ It creates a standard that can be maintained and improved upon together with the generation of performance indicators that will support a continual improvement in performance
- √ It is increasingly relevant in formal proceedings
- √ It can be audited internally and by other local authorities and agencies
- √ It can help to identify weaknesses within the organisation
- √ It promotes effective communication
- √ It will help the enforcement officers to prioritise workload
- √ It can raise the profile of occupational health and safety
- √ It is compatible with other frameworks such as Best Value, Better regulators compliance code, and Framework Agreement on Local Authority Food Law Enforcement and others.

It is important that the policy reaches its target audience through a variety of mechanisms and that the stakeholders understand and accept the policy. The policy will be receptive to the views of regulated businesses and other organisations. Consultation with stakeholders will ensure that they understand the policy. The policy will be communicated effectively to all interested parties.

The provision of a safe and healthy workplace is of paramount importance and enforcement activities of Wyre Forest District Council will reflect this. The enforcement of occupational health and safety will be regarded with equal importance to food safety, licensing and other activities for the purpose of allocating resources.

Signed...

**«Signatory»**

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## **The Aims, Objectives & Scope of the policy**

### **Aim:**

The aim of this policy is to provide enforcement officers and other stakeholders with a clear framework that will guide enforcement activities relevant to the field of occupational safety and health and provide managers with a framework that will facilitate continuous improvement. The purpose is to improve occupational health and safety in key risk areas through the engagement of others. All enforcement officers will on being appointed be given a copy of this enforcement policy, they will be expected to sign their copies of the policy to demonstrate that they have read the policy and will adhere to it .This policy also reflects the principles detailed in The Environmental Health and Licensing Policy.

### **Objectives:**

The aim will be achieved through the following objectives:

- ⇒ to provide the «Manager» with criteria to enable them to prioritise the allocation of resources,
- ⇒ to provide enforcement officers with criteria to enable them to prioritise workloads and improve consistency,
- ⇒ To enable managers to monitor performance and benchmark performance with other local authorities,
- ⇒ To provide a greater level of understanding for elected members of the local authority's role in terms of occupational health and safety,
- ⇒ To enable the business community to acquire a greater level of understanding of the local authority's role in terms of occupational health and safety,
- ⇒ To enable other stakeholders and people affected by work activities to acquire a greater level of understanding of the local authority's role in terms of occupational health and safety.

### **Scope:**

The policy will cover all occupational health and safety enforcement activities that are undertaken by the Food and Safety Section of Wyre Forest District Council

## Principles of Enforcement

The enforcement principles of *proportionality, consistency, transparency, targeting* and *accountability* and all other principles detailed in the revisions of Section 18 as outlined in HELA Local Authority Circular 23/17 will be adhered to. **Wyre Forest District Council is also a signatory to the Better Regulators Compliance code and will ensure that the activities of the Health and safety Section will reflect the principles of standards, openness, helpfulness and complaints.** Decision-making will be achieved through the use of the Health and Safety Executive's Enforcement Management Model (EMM).

### Proportionality

Proportionality means relating enforcement action to risks to occupational health and safety. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which include any actual or potential harm.<sup>1</sup>

Authorised officers will make a judgement as to whether an employer (or other duty holder) has acted 'so far as is reasonably practicable' or 'so far as is practicable,' where appropriate, by balancing the time, cost and effort expended in controlling the risk(s) with the risk to occupational safety and health so as to bring in effective compliance with legislation.

### Enforcement Options

To ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards and yet ensure that the public is adequately protected, many criteria will have to be assessed.

Such criteria include: -

- Seriousness of the offence
- The past history of the enterprise
- Confidence in the management of the enterprise.
- The likely effectiveness of the various enforcement options

Having considered all relevant information and evidence, the options for action are: -

- To take no action leave an visit report
- To take formal action
- To take formal action by service of statutory notices
- Formal caution
- Prosecution
- Prohibition
- Promote continuous improvement and long term compliance

## Consistency

The variety of circumstances presented to enforcement officers precludes uniformity. However, officers will take a similar approach in similar circumstances to achieve similar ends in terms of advice, use of enforcement notices and decisions to prosecute.

Consistency will be achieved through a combination of:

- ⇒ internal audits,
- ⇒ Inter–authority audits as required by mandatory guidance issued under Section 18 Health and Safety at Work etc. Act 1974 to benchmark Wyre Forest District Council 's performance with other local authorities,
- ⇒ desk-top exercises,
- ⇒ a liaison group that will comprise representatives of Bromsgrove District Council, Herefordshire Council, Malvern Hills District Council, Redditch Borough Council, Worcester City Council, Wychavon District Council and Wyre Forest District Council ,
- ⇒ mullet-agency liaison ,
- ⇒ monitoring officers' work by the «**Manager**»,
- ⇒ discussions and meetings between officers,
- ⇒ reviews of enforcement activity within the health and safety section against the enforcement policy,
- ⇒ Consultation with stakeholders and collection, analysis and dissemination of information to those stakeholders to improve standards'
- ⇒ appropriate training.

In premises, for which Wyre Forest District Council may have an interest, the enforcement policy and practices will be carried out in exactly the same way that they do in all other premises in accordance with HELA Local Authority Circular LAC 22/10. Review of these methods will be carried out on an annual basis to ensure that there is effective consistency amongst officers. Previous reviews have indicated improved consistency as a result of all exercises.

## Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders not only what they have to do but also, where this is relevant, what they do not. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.<sup>1</sup>

The conduct of officers during inspections will reflect the principles outlined in Appendix 2.

**Where Wyre Forest District Council has a management or ownership interest in premises for which it is the enforcing authority, the «Manager» must decide whether to transfer enforcement to the Health and Safety Executive. Wyre Forest District Council must be open and transparent about the involvement of the Health and Safety**

**Executive in these premises. There shall also be a process for communication and liaison with Health and Safety Executive, the Petroleum Inspectorate, Police and fire authority on such matters.**

Officers shall comply with the disclosure of information provisions of Section 28 of the Health and Safety at Work Etc Act 1974, Data Protection Act 1994 and Human Rights Act 1998 and the Freedom of Information Act. This will be particularly relevant where an injured party wishes to pursue a civil claim for compensation. It will normally be appropriate for officers to provide a factual report.

Where a business is not satisfied that procedures have been followed it may, in the first instance, make representation to the local authority which will investigate the complaint as detailed in the council Complaints procedure. In the unlikely event that the complaint still exists, the business may approach the Local Authority Unit (LAU) of the Health and Safety Executive. The LAU will aim to resolve the dispute directly with the local authority. If it cannot resolve the matter it will report the matter to the Health and Safety Commission.

### **Targeting**

Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled: and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it - whether employers, manufacturers, suppliers or others.<sup>1</sup>

Wyre Forest District Council will target its approach to enforcement of health and safety legislation according to risk. As such:

- Routine inspections of premises will be targeted on those employers whose activities give rise to the most serious risks or where hazards are least well controlled. This will be achieved through a risk-based, priority planning system. The minimum inspection frequency of inspections will be determined by the risk category of the premises as described in Appendix 1;
- Resources will be targeted in accordance with The HSC Revitalising Strategy and the prioritised work programme and the proposed FIT 3 programme and best value.
- Complaints relating to unsafe working practices or poor working conditions will be investigated.
- Accidents will be investigated having regard to HELA LAC 22/13;
- Local occupational health and safety needs will be reflected by the work of Wyre Forest District Council
- Visits to premises may be combined with visits for other purposes such as enforcement of food hygiene, licensing and other matters;

- Alternative methods of inspection in low risk category premises may be considered in order to allocate greater resources to control of higher risks.

The «**Manager**» will provide criteria and guidelines in the format of THE EMM for the officers to follow in order to assess the most appropriate course of action to be taken according to the '*risk gap*' (i.e. the gap between the actual risk and the standards that are expected) and levels of non-compliance with the law.

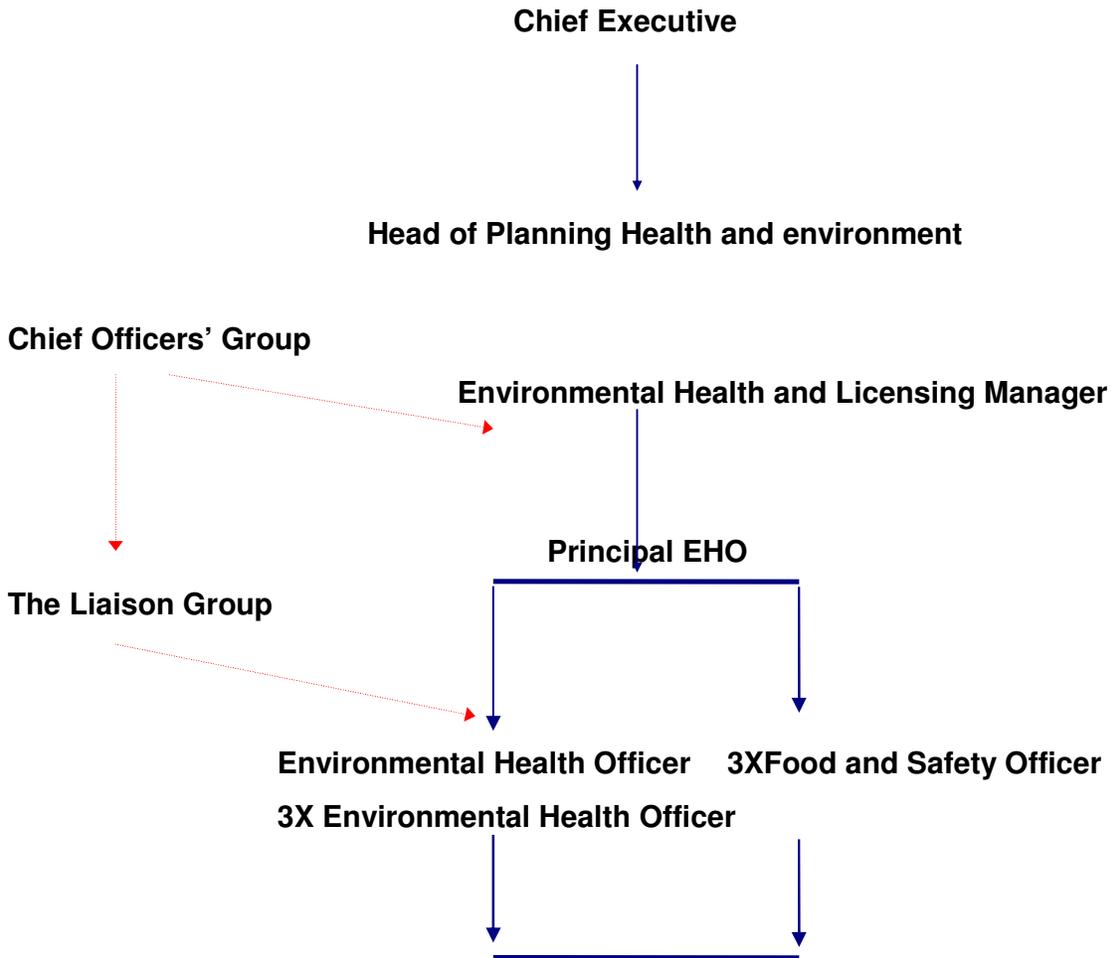
The work of the **Health and Safety Section** will also take account of any strategy and guidance from the Health and Safety Executive, Health and Safety Commission and HELA.

### **Accountability**

Regulators are accountable to the public for their actions. This means that enforcing authorities such as Wyre Forest District Council must have policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.<sup>1</sup> Wyre Forest District Council has a formal complaints procedure that is available separately. Where the policy has been communicated to a stakeholder a questionnaire will be passed to that stakeholder for comment on the policy.

## Organising to Deliver the Policy

The diagram below shows the organisation for delivering *the policy* within «LA».



## Roles and Responsibilities

The **Chief Officers' Group** is responsible for:

- ensuring compliance with national health and safety standards set by the Health and Safety Commission;
- co-ordinating the management of occupational health and safety enforcement activities across the counties of Herefordshire and Worcestershire;
- Directing the activities of the *Liaison Group*.

The **Liaison Group** will report to the *Chief Officers' Group* and is responsible for implementing occupational health and safety enforcement activities across the counties of Herefordshire and Worcestershire through:

- disseminating information to respective local authorities
- sharing examples of good practice
- carrying out inter-authority audits
- updating *the policy*
- Developing and issuing the policy, instructions and guidance on behalf of the Chief Officers' Group.

The «**Signatory**» has overall responsibility for the implementation of *the policy* within the area administered by **Wyre Forest District Council** and will:

- establish the importance of enforcing occupational health and safety in relation to
  1. the Council's overall performance objectives
  2. national health and safety standards set by the Health and Safety Commission
- allocate sufficient resources for the enforcement of occupational health and safety legislation

The Manager is responsible for:

- setting occupational health and safety objectives
- allocation of departmental resources

The «**Manager**» is responsible for:

- communicating the policy to stakeholders
- ensuring the policy is implemented within the department
- monitoring the performance of the department
- ensuring that the inspectorate is competent This will be achieved by monitoring through a competency framework and a training programme following NVQ level 3 - 5
- provision and maintenance of information systems and sources including
- Nominating the Principal EHO to maintain an up-to-date set of HELA Local Authority Circulars and/or access new circulars from the relevant websites, and disseminate such information to officers, as necessary.
- making arrangements for the identification of the relevant Lead Authorities

**Environmental Health staff** are responsible for:

Delivering the policy to businesses and other relevant stakeholders.

Cabinet 24/04/08

**AGENDA ITEM NO. 6**

**APPENDIX 6**  
**Page 11 of 16**

## **Arrangements to Deliver the Policy**

The arrangements for the management of occupational health and safety enforcement comprise communicating *the policy*, delivering *the policy*, and monitoring performance, review and audits.

### **Communicating the policy**

*The policy* will be brought to the attention of all stakeholders by the «**Manager**» in accordance with **Wyre Forest District Council's** Equal Opportunities Policy.

### **Delivering the policy**

Responsibilities and powers of officers and managers are clearly defined within the policy or referenced elsewhere within internal procedures. There will be a clear authorisation policy for officers that are linked to competency, qualifications and experience for enforcement action.

**The «Manager» will ensure that arrangements are made to measure the competency of the enforcement officers and ensure that they are competent in accordance with Health and Safety Commission's Section 18 Mandatory Guidance.**

The «**Manager**» will devise suitable management systems to ensure that enforcement officers receive and apply HSE/HELA guidance. A record of officer's qualifications and professional development in connection with health and safety is kept up-to-date by the «**Manager**».

Authorised officers will carry out proactive work to include occupational health and safety inspections of undertakings in accordance with Appendix 1.

**Existing approaches to enforcement will be assessed to identify how the HELA strategy can be used to inform Wyre Forest District Council's work plan. This will include, for example, the development of strategies to help small firms to comply with health and safety legislation and a system for reporting back to HELA.**

Authorised officers will also undertake reactive work such as responding to requests for information and advice; investigation of accidents and complaints; and respond to other emergencies

*The liaison group* will arrange inter-authority audits in order to measure the extent to which respective local authorities are complying with the requirements of Section 18 Health and Safety at Work etc. Act 1974 and associated mandatory guidance.

### **Monitoring performance**

A variety of mechanisms will be used to monitor the delivery of *the policy*. Significant outcomes will be communicated to appropriate stakeholders. Officers will provide information in the format of the enforcement policy leaflet and what to expect when an officer calls.

## **Review**

The policy will be reviewed annually.

## **Audits**

The policy will be audited.

## **ACKNOWLEDGEMENTS**

Wyre Forest District Council wishes to thank Jonathan Dempsey for the considerable effort he put into the preparation of the policy document and the members of the Liaison Group for their encouragement and support during its preparation and editing.

The signatory authorities are as follows:

Bromsgrove DC, Herefordshire Council, Malvern Hills DC, Redditch BC, Worcester CC, Wychavon DC and Wyre Forest DC

## **REFERENCES**

1. Enforcement Policy Statement, Health & Safety Commission HSC15 01/02

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Auditing Framework for Local Authorities' Management of Health and Safety Enforcement HELA 2000

Health and Safety Commission Strategy on Health and Safety Training: LAC 84/3 rev.

EN 45005: 1995 A Framework for Managing Local Authority Food Hygiene Inspections.

Managing Health and Safety Enforcement (CIEH Course Notes).

LA Enforcement in premises in which they may have an interest: LAC 22/10 (2000)

Health and Safety Executives Policy and Practices on the Disclosure of Health and Safety Information: LAC 61/1

Health and Safety in Local Authority Enforced Sectors - HELA National Picture 2000.

## Appendix 1 - Minimum Inspection Frequencies

CATEGORY OF PREMISES	MINIMUM INSPECTION FREQUENCY
A	1 YEAR
B1	2 YEARS
B2	3 YEARS
B3	4 YEARS
B4	5 YEARS
C	6 YEARS

Where it is not appropriate to carry out planned, routine inspections of low risk premises (Category C) a self-assessment questionnaire may be sent to the undertakings for completion and return to the «Dept». Authorised officers may carry out a routine inspection of 10% of respondents and all businesses that do not respond. The questionnaires cover all relevant aspects of health and safety management and may require the submission of further documentary evidence.

## Appendix 2 - Conduct of Inspections

- The purpose of planned, routine inspections is to identify risk gaps and non-compliance with legal requirements. This is reflected in what officers do, look for and ask.
- Inspections of premises will normally be unannounced unless it is necessary to see a particular person or process. In these circumstances, the officer may make an appointment.
- Visits will be made during normal opening hours unless it is necessary to enter at other times.
- At the beginning of the inspection, officers will give a copy of the leaflet “What to expect when a health and safety inspector calls” to a responsible person.
- At the end of routine inspections and other visits officers shall leave their contact details on site (e.g. business card or Report of Visit).
- Officers will help employers (and other duty holders) to understand what is expected of them and what they should expect from their enforcing authority.
- Officers will discuss the proposed courses of action with the proprietor, where appropriate, and take the employer’s views into account.
- Following the inspection, a written report shall be sent to the business within one week. This shall include:
  - name of officer
  - names of persons interviewed
  - evidence taken e.g. photograph
  - date and time of inspection
  - areas inspected
  - action required, (what, why - details of legislation, contravened, when, - deadlines)
  - consequences of failure to comply
  - recommendation
  - information on useful publications where appropriate
- All correspondence between officers and duty holders will make a clear distinction between what duty holders have to do to meet their legal obligations and recommendations of best practice.
- When seizure powers are used, officers will serve a “Notice of Taking Possession and Detaining” on the proprietor at the time (where appropriate) and confirm, in writing, within ten days, the items that were seized and the reasons for seizure.

### Consultation with Employees

When carrying out an inspection or investigation the officer will ask for the safety representative to accompany them on the inspection.

Officers will provide information to employee representatives and/or safety representatives following an inspection or accident investigation.

### **Lead Authority**

Officers will consult the relevant Lead Authority or Principal Authority Partnership body when considering formal action against a duty holder (except where immediate action is considered necessary) [see LAC\*\*]. A record of the contact will be kept on the property file. Officers of Wyre Forest District Council will participate with the HSE LOP scheme. Where there is lack of agreement between the enforcing authority and the lead authority then the matter will be referred to the Better Regulatory Office for a decision.

### **Agency Workers**

Following a fatality or reportable major injury to an employee who is employed by employment agency, an officer will notify the Employment Relations Directorate of the Department of Trade and Industry. This requires close liaison with the Department of Trade and Industry to ensure that decisions on action are co-ordinated and timely. [See LAC2/4 (September 2000)]

The «**Manager**» will make arrangements to mitigate the effects of pressures that might affect an inspector's judgement. These may include:

- Lack of familiarity with a process or situation (e.g. lack of competence).
- lack of resources (e.g. pressure to concentrate on other priorities such as food safety)
- relevant personal relationships
- relevant history (e.g. where an inspector has worked for the organisation previously)
- financial and other interests of the officer in a competitor business to those inspected
- Service contracts operated at a business by other sections of the same local authority department e.g. pest control contract.