

OCCUPATIONAL HEALTH AND SAFETY LAW ENFORCEMENT PLAN 2023-2025

1.0 Executive Summary

- 1.1 The Council, as the “**enforcing authority**” under the Health and Safety at Work etc. Act 1974, is required formally to approve an Occupational Health and Safety Law Enforcement Work Plan under the statutory National Local Authority Enforcement Code. The paper presents the 2023-25 Work Plan and Enforcement Policy for Committee approval.
- 1.2 We live in a society where we expect to be safe at work, be able to shop at businesses which do not put a significant hazard to us, and to a range of facilities, for leisure and other purposes, which we can enjoy safely. The Health and Safety at Work Act etc.1974 provides for this, but these standards can only be achieved, maintained and improved, through the work of the Health and Safety Executive (hereafter referred to as HSE) and Local Authorities, who enforce the provisions of the Act.
- 1.3 The Planning, Protective Services and Planning Committee approved the [Regulatory Services Work Plan 2023-25](#) on the 21 June 2023. This overarching plan covered the wide range of priorities across Regulatory Services, included the statutory health and safety enforcement role carried out by environmental health. The Occupational Health and Safety Work Plan 2023-23 provides more detail
- 1.4 Recommendations
 - 1.4.1 Members are asked to recognise the work by environmental health to secure standards of health and safety across businesses in Argyll and Bute. This directly protects employee and others (e.g. members of the public etc.), supports business and indirectly supports the wider economy
 - 1.4.2 To approve the Occupational Health and Safety Law Enforcement Workplan 2023-25 and enforcement policy to be implemented by Regulatory Services.

OCCUPATIONAL HEALTH AND SAFETY LAW ENFORCEMENT PLAN 2023/25

2.0 INTRODUCTION

- 2.1 The Council, as the “**enforcing authority**” under the Health and Safety at Work etc. Act 1974, is required formally to approve an Occupational Health and Safety Law Enforcement Work Plan under the statutory National Local Authority Enforcement Code. The paper presents the 2023-25 Work Plan and Enforcement Policy for Committee approval.
- 2.2 Like other health protection activities, this work going largely un-noticed, but seeks to protect society’s expectations to be safe at work, be able to shop at businesses which do not pose a significant hazard, and to safely use a range of facilities, for leisure and other purposes. The regulatory work undertaken by environmental health officers through this plan aims to achieve this level of expectation of protection.

3.0 RECOMMENDATIONS

- 3.1 Members are asked to recognise the work by environmental health to secure standards of health and safety across businesses in Argyll and Bute. This directly protects employee and others (e.g. members of the public etc.), supports business and indirectly supports the wider economy.
- 3.2 To approve the Occupational Health and Safety Law Enforcement Workplan 2023-25 and enforcement policy to be implemented by Regulatory Services.

4.0 SUMMARY OF ACTIONS FROM 2020-22 WORK PLAN

- 4.1 Argyll and Bute Council is an enforcing authority for the Health and Safety at Work etc. Act 1974 and regulations made thereunder. In Great Britain, enforcement of the 1974 Act is generally divided the Health and Safety Executive (HSE) and local authorities. HSE is responsible for workplaces including factories, farms, building sites, schools, hospitals, and offshore installations. The Council covers businesses including offices, shops, hotels, leisure premises, caterers, nurseries, and clubs. In Argyll and Bute, the Environmental Health team have responsibility for health and safety law enforcement in over 3,500 premises.

4.2 Section 18 of the 1974 Act provides that HSE can issue guidance to direct how local authorities plan their priorities and target their interventions, enabling them to meet the requirements of the *National Local Authority Enforcement Code*. The Code and guidance are strongly influenced by the UK Government's view that inspection and regulation activities are a burden on business and should only be used when alternative methods of securing compliance are inappropriate. Therefore, the routine inspection of workplaces across England, Scotland and Wales has effectively ceased.

HSE's guidance is published as local authority circular LAC 67/2 and is revised each year. The 2023 revision, version 12, has been used to develop the Occupational Health and Safety Law Enforcement Plan 2023-2025, and which is appended to this report.

4.3 The Planning, Protective Services and Planning Committee approved the [Regulatory Services Work Plan 2023-25](#) on the 21 June 2023. This overarching plan covered the wide range of priorities across Regulatory Services, included the statutory health and safety enforcement role carried out by environmental health. The Occupational Health and Safety Work Plan 2023-23 provides more detail.

4.4 The following summarises the health and safety enforcement work over the last plan period and the outcome of investigations that were completed in that period.

1. **Loch Awe Boats** The death of Kieran Cowan on Loch Awe on 17th August 2019 arose when three young men were hired a defective boat, without proper safety equipment, in stormy weather, by a licensed boat hire operator. The incident was investigated jointly with Police Scotland under the direction of the Crown Office. A report was submitted following that investigation, which resulted in Clifford Davies and Janet Lightbown, the operators of Loch Awe Boats, pleading guilty to a charge under section 3(1) of the 1974 Act and to causing the death of Kieran Cowan. The case was heard at Oban Sheriff Court on 10th January and the business was fined £10,000.
2. **Fiscal warning – work equipment in catering.** An incident in 2018, in which a young person working in a catering establishment was injured when using a domestic food processor, resulted in a Fiscal warning for a non-causative breach of the Provision and Use of Work Equipment Regulations 1998. That warning has now expired.
3. **Other investigations**
 - a. An incident in which a worker was injured in a workplace transport accident was investigated and a report has been submitted to the Crown Officer Procurator Fiscal Service.
 - b. An incident in which a worker was injured handling equipment at work was investigated and disposed of by means of a Fiscal Warning.

- c. Two other serious incidents are currently under investigation with a view to reports to the Crown Office Procurator Fiscal Service.

4. **Accident reports**

- a. The local authority receives statutory reports of injuries, diseases, and dangerous occurrences from workplaces which fall to it for enforcement. The service has procedures for screening which incidents are to be investigated, according to HSE guidance.
- b. In the year 2022-2023, 49 RIDDOR reports were received. Five were selected for investigation. One of these was the workplace transport incident which resulted in a report to the Crown Office Procurator Fiscal Service.
- c. In first quarter of the year 2023-2024, 11 RIDDOR reports were received. Two were selected for investigation. One investigation is ongoing.

5. **Summary of enforcement actions**

- a. Enforcement actions can arise from proactive inspections or from reactive work such as investigating incidents. Inspectors may also come across unsafe conditions for workers and the public when conducting other site inspections. Inspectors will always deal with unsafe conditions when they find them, and interventions range from giving advice to formal enforcement notices.
- b. In the year 2022-2023, 5 immediate prohibition notices and 10 improvement notices were served.
- c. In the first quarter of the year 2023-2024, 2 improvement notices were served.
- d. Prohibition notices were served for unsafe gas installations, unsafe electrical installations, and unsafe asbestos materials
- e. Improvement notices were served for failure to maintain gas installations, absence of suitable and sufficient risk assessments, absence of *Legionella* controls in premises, failure to implement risk assessments in respect of workplace transport.

6. **Guest safety in short-term lets accommodation**

Guest safety conditions were proposed for the short-term lets licensing scheme based on known topics which had given rise to evident concern in the holiday let sector in the past. It is anticipated that the requirement for hosts to comply with specific licensing conditions will ensure safer conditions for guests and enable hosts more easily to identify and comply with their duties under health and safety law.

7. **Co-ordination with other regulators**

The Lead EHO (Health and Safety) participates in regional and national groups to share information and practice with other local authority regulators. These groups include, the West of Scotland Health and Safety Liaison Group, for which the Council provides the secretarial function, and the Royal Environmental Health Institute of Scotland's Health and Safety Co-ordination Group.

8. **Expert Advice Group**

The ETC19 group was established to co-ordinate the local authority regulatory response during the period of restrictions at the start of the COVID pandemic. Argyll and Bute Council have had representation on this group from the foundation of the group. The group has established very good working relationships with Scottish Government officials, and in liaison with HSE and Police Scotland. The group continues in existence as a forum for discussing regulatory matters of interest to environmental health and trading standards colleagues.

9. The Lead EHO (Health and Safety) also served on two Scottish Government short-life working groups, the Ventilation and Adaptations groups. His role was to represent the local authority environmental health perspective.

5.0 **CHALLENGES**

- 5.1 The local authority health and safety regulatory role continues to be under pressure, primarily of staffing and secondarily of other operational demands on environmental health functions. Inspectors are, except for the Lead EHO (Health and Safety), generalist and have responsibilities for food control, licensing, and public health duties in addition to their health and safety function. Conversely, the demands of staffing reactive investigations into serious health and safety incidents affects the delivery of other environmental health functions. The Occupational Health and Safety Law Enforcement Plan 2023-2025 is written with these constraints in mind, and with the need to maintain the competence of Environmental Health Officers who are not specialist health and safety inspectors.

6.0 **OCCUPATIONAL HEALTH AND SAFETY ENFORCEMENT PLAN 2023-25**

- 6.1 The 2023-25 work plan has been developed having regard to national and local priorities, our available resource and meets the requirements of the National Code.
- 6.2 Our priorities are detailed in APPENDIX 1 of this report which is attached as an appendix to this report.

In summary, this focuses on high risk activities, responding to service requests and reported accidents/incidents; assessing

compliance with certificates issued in respect of petroleum sites, and targets the following national and local initiatives:-

(a) **National**

- Construction safety
- Falls from height
- Health risks from respirable silica dust
- Duty to manage asbestos
- Visitor attractions to prevent or control ill-health arising from animal contact
- Beverage gases in the hospitality sector
- Gas safety in commercial catering premises
- Welfare provision for delivery drivers
- Raising awareness of the need to prevent injury to members of the public from accessing large commercial waste and recycling bins
- Promoting worker involvement in safety management systems

(b) **Local Priorities**

- Public and worker safety at events
- Legionella* control in hot tubs and spa pools

6.3 We will continue to monitor accident and injury rates across all employment sectors in Argyll and Bute and develop intelligence-based targeting methods for ensuring that our regulatory interventions address risk and deliver safer, healthier working conditions for the people of Argyll and Bute.

7.0 **ENFORCEMENT POLICY**

7.1 Our enforcement policy seeks to achieve compliance through appropriate, proportionate and risk-based regulates, and ideally through working with business.

7.2 The 1974 Act provides formal enforcement powers which are used by authorised inspectors where they identify a significant risk to health or safety; where there is a history of non-compliance, where the informal approach working with business is unsuccessful, and will be considered in the event to any major or significant incident or injury to employee. Reports will be made to the Procurator Fiscal in cases of serious breach of duty, significant risk or serious harm to employees or the public, or failure to comply with formal enforcement notices.

7.3 The Occupational Health and Safety Law Enforcement Policy (see Appendix II) has been reviewed and is presented for approval. It meet the requirements of the National Code, the *Scottish regulators' strategic code of practice* and the Council's Enforcement Policy. There are no changes to the policy previously approved by Committee.

8.0 CONCLUSIONS

8.1 Argyll and Bute Council's Environmental Health team continues to provide a competent and flexible enforcement team for health and safety matters, although resourcing requires it to be targeted and reactive in nature

This report sets out the priorities of Regulatory Services to continue to protect citizen and worker health and safety through a considered, proportionate, work plan, always acknowledging that significant investigations might require to be resourced at any time.

9.0 IMPLICATIONS

9.1	Policy	Meets the National Code and the Regulatory Performance Agenda
9.2	Finance	None. Plan has been developed to reflect existing budget and available resources.
9.3	Legal	Meets our statutory duties as an "enforcing authority"
9.4	HR	None
9.5	Fairer Scotland	
9.5.1	Equalities	None
9.5.2	Socio-economic	None
9.5.3	Islands	None
9.5.4	Climate change	None
9.6	Equalities	None
9.7	Risk	The major risks are lack of available resource and competing operational priorities. These are being managed.
9.8	Customer Service	None

Executive Director with responsibility for Environmental Health: **Kirsty Flanagan**

Policy Lead:

Councillor Kieron Green

For further information contact: Alan Morrison, Regulatory Services and Building Standards Manager (Alan.Morrison@argyll-bute.gov.uk 01546 604292)

Appendix 1: Occupational Health and Safety Law Enforcement Work Plan 2023-25 Priorities

Appendix 2: Argyll and Bute Council Occupational Health and Safety Law Enforcement Policy

APPENDIX 1: Occupational Health and Safety Law Enforcement Plan 2023-2025

Summary

The following areas of work are proposed for the period 2023-2025.

National Priorities

1. Building safety – duty to manage asbestos/falls through fragile surfaces/
respirable silica dust.
Actions : Raising of awareness in routine contacts and intervention on complaint
or MECs.
Resource: Inspectors having routine contact with businesses for other regulatory
functions.
2. Visitor attractions to prevent or control ill health arising from animal contact.
Actions : Proactive inspection of the small number of sites in Argyll and Bute.
Resource: Lead EHO.
3. Inflatable amusement devices.
Actions : Proactive inspection when found to be in use. Imposition of safety
requirements through event licensing processes. Provision of information on the
council's website.
Resource: Area inspectors.
4. Gas safety in catering premises.
Actions : Providing advice to new businesses, checking currency of records during
routine visits, responding to complaints and MECs.
Resource: Inspectors having routine contact with businesses for other regulatory
functions.
5. Electrical safety in hospitality settings.
Actions : Raising of awareness during routine visits to hospitality settings,
responding to complaints and MECs.
Resource: Inspectors having routine contact with businesses for other regulatory
functions.
6. Spa pools and hot tubs on display.
Actions : Providing information to retailers about the actions required to be taken
to prevent outbreaks of Legionnaires' disease.
Resource: Lead EHO.
7. Welfare provision for delivery drivers.
Actions : Raising of awareness during routine visits to restaurants and takeaway
premises, responding to complaints and MECs.
Resource: Inspectors having routine contact with businesses for other regulatory
functions.
8. Promoting worker involvement in safety management systems.
Actions : Engaging with worker representatives during proactive inspections or
responding to complaints/MECs.

Resource: Inspectors undertaking proactive inspections or responding to complaints/MECs.

Local Priorities

9. Spa pools in commercial use.
Actions : Proactive engagement with operators when identified and through short-term lets licensing consultations, proactive inspections, responding to complaints.
Resource: Lead EHO
10. Bather safety in public swimming pools.
Actions : Proactive inspections of public swimming pools focussing on lifeguarding or emergency response arrangements, according to the risk presented to bathers.
Resource: Lead EHO and inspectors.

These topics have been identified from reviewing the 12th edition of LAC67/2 ([weblink](#)). A more detailed analysis of the topics is included in the annexes to this report.

The following training is **proposed**:

- A. Procedures for the investigation and reporting of serious health and safety breaches.
- B. Optional refresher briefings, depending on demand, selected from the following topics:
 - Gas safety in catering premises
 - Solid fuel catering appliances
 - Inflatable play equipment
 - Legionella in water services
 - Manual handling

APPENDIX 2: Occupational Health and Safety Law Enforcement Policy

1. Introduction

- 1.1 Argyll and Bute Council is an enforcing authority for the purposes of the Health and Safety at Work etc. Act 1974 (“the Act”).
- 1.2 As an enforcing authority under the Act, the Council’s objective is to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.
- 1.3 The Council is required to have regard to the Health and Safety Executive’s (HSE’s) *Enforcement Policy Statement* in determining its own policy, and HSE’s *Enforcement Management Model* in making enforcement decisions in individual cases.
- 1.4 The principles and policies set out in this document are brought into operational effect by procedures approved by the Regulatory Services and Building Standards Manager in consultation with the Area Environmental Health Managers, and the Lead EHO (Health & Safety and Service Support).

2. The principles of enforcement

- 2.1 Argyll and Bute Council is committed to firm but fair enforcement of health and safety law. The Council’s approach is informed by the following principles:
 - 2.1.1 **Proportionality**, which means that enforcement action relates to the risks to health and safety, to the seriousness of any breach and to any actual or potential harm arising from a breach of the law.
 - 2.1.2 **Targeting**, which means that the regulatory activities of the Council are directed primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. Targeting also requires that action is focussed on the dutyholders who are responsible for the risk and who are best placed to control it.
 - 2.1.3 **Consistency**, which means taking a similar approach in similar circumstances to achieve similar ends. This is not the same as uniformity and requires the exercise of professional judgement and discretion by inspectors.

2.1.4 **Transparency**, which means helping dutyholders to understand what is expected of them and what they should expect from the Council as an enforcing authority. It also means making clear to dutyholders not only what they have to do, but where this is relevant, what they don't. This means distinguishing between statutory requirements and advice or guidance about what is good practice but not compulsory.

2.1.5 Public transparency also requires that the Council shall publicise successful enforcement actions such as prosecutions.

2.1.6 **Accountability**, which means that the Council, as an enforcing authority, is accountable to the public for its actions. This means having a clear and accessible complaints procedure which is brought to the attention of those with whom inspectors come into contact.

3. **The purpose and methods of enforcement**

3.1 The purpose of enforcement is to:

3.1.1 Ensure that dutyholders take action to deal immediately with serious risks;

3.1.2 Promote and achieve sustained compliance with minimum legal standards;

3.1.3 Ensure that dutyholders who breach minimum legal requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include reporting offences to the Crown Office Procurator Fiscal Service.

3.2 The methods of enforcement are:

3.2.1 Giving information and advice, either verbally or in writing;

3.2.2 Serving improvement or prohibition notices;

3.2.3 Reporting the matter to the Crown Office Procurator Fiscal Service

3.3 In addition to the methods of enforcement set out above, inspectors have powers under section 20 of the Act to deal with causes of immediate danger in the workplace.

4. **Enforcement decisions**

4.1 Enforcement decisions shall be taken having regard to HSE's *Enforcement Policy Statement* and *Enforcement Management Model*.

4.2 Enforcement decisions shall be made in accordance with the principles set out at section 2 of this policy.

5. **Prosecution**

5.1 Enforcement decisions shall be made in accordance with the principles set out at section 2 of this policy.

5.2 The decision to report an offence to the Crown Office Procurator Fiscal Service shall be considered when:

5.2.1 Prosecution is identified as the most appropriate intervention from the *Enforcement Management Model*;

5.2.2 The relevant dutyholder has failed to comply with an improvement notice without reasonable excuse;

5.2.3 The requirements of a prohibition notice have been breached.

5.3 Where inspectors are obstructed in the execution of their duty, consideration shall be made to reporting the matter to the Crown Office Procurator Fiscal Service.

5.4 Where inspectors are assaulted, the Council shall always support the officer should they wish to report the matter to the Police, with a view to seeking the prosecution of offenders.

6. **Business's right to challenge incorrect health and safety advice**

6.1 Businesses are entitled to receive sensible health and safety advice based on risk, and Argyll and Bute Council are committed to giving advice on that basis.

6.2 Argyll and Bute Council shall put the following procedures in place to enable businesses to challenge incorrect health and safety advice, or advice which goes beyond what is required to control the risk(s) adequately:

6.2.1 A business can raise the matter with the Inspector directly;

6.2.2 If not satisfied, the business can raise the matter with the inspector's line manager;

- 6.2.3 If still not satisfied, the business can:
 - 6.2.3.1 Raise the matter through the Council's Complaints Procedure, and/or;
 - 6.2.3.2 Raise the matter with the Independent Regulatory Challenge Panel.

6.3 All informal letters shall include a paragraph setting out the Council's commitment to giving sensible health and safety advice and indicating how a business may raise concerns about the requirements or advice given, including how to contact the Independent Regulatory Challenge Panel.

7. **Enforcement in premises in which Argyll and Bute Council may have an interest**

7.1 A potential conflict of interest may occur where Argyll and Bute Council is the relevant enforcing authority in relation to premises in which it also has an ownership or management interest. A conflict of interest can either be an actual or a perceived conflict of interest.

7.2 Potential conflicts of interest shall be managed according to the following principles:

7.2.1 The Regulatory Services and Building Standards Manager shall be proactive in identifying and addressing potential conflicts of interest and will consult with the Council's Senior Health and Safety Officer;

7.2.2 The Regulatory Services and Building Standards Manager shall propose arrangements for dealing with those exceptional circumstances where a conflict of interest has come to light after an incident has occurred;

7.2.3 The Regulatory Services and Building Standards Manager shall consult with the Council's Senior Health and Safety Officer to identify whether any potential conflicts of interest are introduced or removed when governance arrangements change.

7.3 It is not presumed that HSE will act as the default regulator where there is a potential conflict of interest. Other means of addressing the conflict should be explored first, with transfer of enforcement responsibility to HSE taking place only in exceptional circumstances and as a last resort.

7.4 Argyll and Bute Council shall otherwise:

7.4.1 Carry out its enforcement policy and practice in the same way that it does for all other premises and dutyholders;

7.4.2 Inform HSE if enforcement allocation for the premises requires to be reviewed or re-allocated.

8. Appointment of Inspectors

- 8.1 The Executive Director, Development and Infrastructure Services has delegated authority under the Council's Scheme of Delegation to appoint inspectors under the Act.
- 8.2 The appointment of inspectors and the variation of the level and scope of their appointments is at the discretion of the Executive Director, Development & Infrastructure Services, having regard to the recommendation of the Regulatory Services and Building Standards Manager.

9. Indemnification of Inspectors

- 9.1 Under the terms of section 26 of the Act, where an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are that he is not legally entitled to require Argyll and Bute Council as the enforcing authority to indemnify him, Argyll and Bute Council shall, nevertheless, indemnify him against the whole or any part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the Regulatory Services Manager is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

10. Review

- 10.1 This policy will be reviewed annually, and more frequently as may be required, by the Regulatory Services and Building Standards Manager.
- 10.2 The policy will be presented to the Planning, Regulatory Services and Licensing Committee for approval as part of the Occupational Health and Safety Law Enforcement Plan.

Alan Morrison, Regulatory Services and Building Standards Manager
Reviewed: July 2023
Reviewer: Patrick Mackie, EHO (Health & Safety and Service Support)