

## Enforcement Decisions

### 1. Purpose of this document

- 1.1. To ensure the consistent application of the Council's *Occupational Health and Safety Enforcement Policy* in the making of enforcement decisions arising, in particular, from inspection, incident or complaint investigations.
- 1.2. The *Enforcement Policy* sets out the principles to be applied when determining what enforcement action should be taken in response to breaches of health and safety legislation. Fundamental is the principle of 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. Scope of this document

- 2.1. In this procedure, **enforcement** means all dealings with dutyholders that results in the serving of improvement or prohibition notices, recommendations for prosecution and the providing of information or advice, whether face-to-face or in writing.

### 3. Use of the Enforcement Management Model

- 3.1. Note that the Enforcement Management Model ("EMM") is not a procedure in its own right but is used to promote consistency, proportionality, transparency and assist inspectors in the decision-making process.
- 3.2. In cases where an immediate decision is required, e.g. where there is a risk of serious personal injury, it is proportionate to consider action under section 22 or section 25 of the 1974 Act.
- 3.3. The EMM shall be applied in all other cases where an enforcement decision is required.
- 3.4. By using a prohibition notice or seizing and making safe an article or substance, an inspector is likely to have controlled the risk to the extent that that is a negligible or no risk remaining. Nevertheless, an EMM assessment is still required to determine:
  - whether further enforcement action is required to secure sustained compliance with the law;
  - that all other priorities for action have been identified; and

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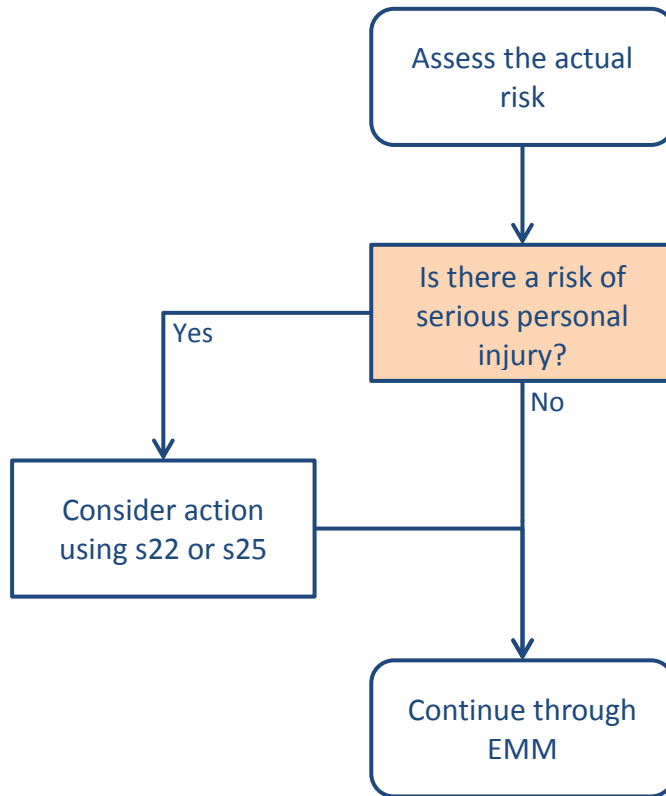
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- whether punitive action is required.
- 3.5. It is noted that advice which is not a verbal warning does not require assessment according to EMM, but should in all cases be recorded in file records.
- 4. Prosecution**
- 4.1. In any case where EMM or the *Enforcement Policy* indicate that prosecution is to be considered, the decision to refer a case to the COPFS shall be made by the Regulatory Services Manager.
- 5. Formal records**
- 5.1. The decision-making process and the application of EMM shall be fully recorded in the following cases:
- fatalities
  - mandatory incident investigations
  - major incidents
  - cases which are considered for referral to COPFS
  - otherwise as required by the Regulatory Services Manager
- 5.2. A formal record shall be kept in any case in which the action proposed differs from that indicated by EMM.
- 6. References**
- 6.1. The Health and Safety at Work etc. Act 1974
- 6.2. Argyll and Bute Council's *Occupational Health and Safety Enforcement Policy*.
- 6.3. *Enforcement Management Model, Operational version 3.1*, HSE
- 6.4. *The National Local Authority Enforcement Code – Health and Safety at Work, England, Scotland and Wales*, HSE, May 2013
- 6.5. HSE's Internal Operational Procedures for Enforcement Decisions,  
[www.hse.gov.uk/foi/internalops/og/ogprocedures/enforcement/index.htm](http://www.hse.gov.uk/foi/internalops/og/ogprocedures/enforcement/index.htm)  
(accessed 15/04/2013)
- 6.6. Enforcement Policy Statement, HSE41 (rev1), HSE 2009

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### APPENDIX A – Enforcement Decisions



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