

HEALTH & SAFETY AT WORK

ENFORCEMENT POLICY

1. INTRODUCTION

This Policy is based upon the information and guidance contained within the National Local Authority Enforcement Code (The Code) introduced under Section 18 of the Health and Safety at Work etc. Act. 1974

In accordance with the Code and the Enforcement Concordat, as adopted by Aberdeenshire Council, detailing the principles of good enforcement, the Policy incorporates the principles of targeting, proportionality, transparency, and consistency.

It has been formulated, primarily for the guidance of the Health and Safety Enforcement Officers within the Service. However, the information in the Policy will be of interest to employers, employees and others who may be affected by the work activity covered by the Aberdeenshire Council in its role as Enforcing Authority in terms of The Health & Safety at Work, Etc. Act, 1974 (the 1974 Act).

The objective of the Service is the reduction of **Risk*** and the protection of people associated with work activities within its enforcement role as defined in the Health & Safety (Enforcing Authority) Regulations.

The Service also seeks to ensure that work activities carried out at workplaces do not, so far as is reasonably practicable, present a risk to the health and safety of any person who may be affected by them.

It is, however, the clear responsibility of those who create the risks at work (the duty holder) to comply with the legislation and to effectively manage health and safety within the workplace.

This Policy has been produced with reference to the Scottish Regulators' Strategic Code of Practice in accordance with the Regulatory Reform (Scotland) Act 2014. Aberdeenshire Council Environmental Health Service will make a commitment to better regulation

2. TARGETING

The Service will undertake a priority based Preventative Inspection Programme of Premises in terms of the 1974 Act in accordance with the Health & Safety

Executive/Local Authority enforcement Liaison Committee (HELA) Circular 67/2.

****In this Policy “Risk” (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.***

The Service will therefore comply with the principle of targeting by basing the Inspection Programme on the risks associated with the specific work activity - or where hazards are least well controlled. This will result in a risk-based approach to Inspections concentrating on those aspects which are most important for ensuring that health, safety, and welfare standards are maintained.

In addition to planned General Inspections, Officers will undertake the following:

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1. Investigate all complaints that are received about workplace health, safety, and welfare, where sufficient information and/or evidence is available, and in accordance with the Service Procedures and Service Standards.
2. Investigate serious accidents, dangerous occurrences and cases of occupational disease reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) in accordance with the adopted **policy on the selection criteria for the Investigations of Workplace Accidents, Dangerous Occurrences and Work-Related Ill Health**, the criteria detailed in this Policy and the relevant Service Standards.
3. Investigate any other incidents regarding work activities, which come to the attention of this Enforcing Authority in accordance with the Guidance contained in HELA Local Authority Circular 67/2, and the criteria laid down in this Policy.
4. Participate in initiatives identified within the Strategic Programme Portfolio and selected and detailed in the Health and Safety Service Plan
5. Seek to educate businesses and the general public as to the requirement for the provision of safe and healthy places of work, and the rights of employees with regard to occupational health, safety and welfare.
6. Actively participate and liaise with other agencies, stakeholders, and neighbouring Local Authorities to promote good health and safety management practice.

Investigations are undertaken to determine: -

- ❖ Cause of incidents

- ❖ Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the Law
- ❖ Lessons to be learnt and to influence the Law and guidance
- ❖ What response is appropriate to a breach of Law

Officers will respond to complaints, incidents, accidents, etc. which requires further investigation within the timescales intimated in the current Service Standards on receipt of notification.

3. PROPORTIONALITY

To achieve compliance, the enforcement action shall be proportionate to the risks to health and safety and to the seriousness of any breach in legislation. The aim of the Service is to work with business/employers by providing advice and guidance on all aspects of health and safety management. Whilst helping to secure compliance with legislative requirements, prevent accident and ill health at work, informal means will be used wherever possible.

There will be occasions, however, when formal action is required. The **Enforcement Management Model (EMM)** will be applied to all formal regulatory actions, including investigations of fatalities, major incidents, specified injury investigations and any intended prosecution, to determine the appropriate enforcement action. The decision to embark on formal action and the type of action will also be dependant on the following:

- ❖ Seriousness of the offence
- ❖ The degree of risk
- ❖ The means of remedying the contravention
- ❖ Attitude of employer
- ❖ Previous record including Confidence in Management
- ❖ Object of action – Compliance
Deterrence
Punishment

The outcome of the key decision points will be recorded using the enforcement assessment record forms and retained within the appropriate premises file.

Inspector's enforcement decisions shall be sampled and reviewed using the EMM as part of the routine monitoring by line managers including the Team Manager (Health and Safety).

The level of enforcement action available to Authorised Officers is as follows:

- ❖ Informal Action – Verbal or Written Advice
- ❖ Improvement Notice and/or
- ❖ Prohibition Notice (Immediate or Deferred)
- ❖ Report to the Procurator Fiscal

The Officer will adopt the most effective course of action to achieve the necessary outcome, which will cause the least disruption to the business, whilst

ensuring that the risks to employees and any other person are reduced to a tolerable level.

Enforcement action will normally be taken against employers. However, in certain circumstances, enforcement action may be directed against the individual employee.

Employees, Managers, Company Office Bearers and the Self Employed, as they also have a general duty of care under the 1974 Act.

In addition, if they consider it appropriate, Enforcement Officers may exercise their powers under Section 20 of the 1974 Act, which will allow them to seize and make safe any article or substance, which they consider presents an imminent danger of serious personal injury.

An Improvement Notice will be served where there is a repeated disregard of legal requirements, a serious legal contravention exists, previous informal correspondence has not been acted upon, or under any other appropriate circumstances.

A Prohibition Notice (Immediate or Deferred) will be served if a work activity being carried on or likely to be carried on presents an imminent risk of serious personal injury and the person in control of the activity is unable or unwilling to cease the activity at the request of the Officer, or the Officer has little or no confidence that the activity will cease or not take place unless a Prohibition Notice is served.

The sanction of prosecution, as recommended to the Procurator Fiscal, will be reserved for the more serious offences, which may include a fatality, serious injury or a total disregard by employers, employees, or others, of their legally defined responsibilities as per statutory provisions.

If either a Prohibition or Improvement Notice is not complied with, a Report will be submitted to the Procurator fiscal immediately.

With any intended formal enforcement action, regard will be made to the Primary Authority Principal as laid down by the Regulatory Enforcement and Sanctions Act 2008.

4. TRANSPARENCY

It is important that those who have a duty to comply with health and safety requirements know what is expected of them and they know what to expect of the Service.

Businesses will be informed why enforcement action is being taken and of their rights. The leaflet entitled "What to expect when a health & safety Inspector Calls" will be issued to all businesses during a visit.

If during an inspection, a contravention is noted, these will be conveyed in writing to the business concerned and any other relevant party within 10 working days of the inspection as per the Service Standards.

The letter will clearly identify the contravention, the actions necessary to rectify the situation, and will ensure that legal requirements as opposed to recommendations are clearly identified. Agreed timescales will also be given as to when the contravention should be rectified.

Wherever appropriate, inspections and letters will highlight the health and safety website available within Aberdeenshire or the HSE website and identify advisory leaflets available and further documentation including guidance, which the proprietor of the business may wish to obtain to aid compliance.

At any time during an inspection or investigation, Enforcement Officers may contact employees at the premises, or their representatives and provide them with appropriate factual information on any matters affecting their health, safety or welfare, and the action the Officer proposes to take. The information given will have regard to legal constraints and requirements.

5. CONSISTENCY

The Service recognises the importance of consistency in approach and that similar circumstances receive a similar approach and have a similar outcome. Consistency of enforcement will be ensured through the following: -

1. The training of Enforcement Officers will continually be under review and in line with S18 Standards. Regard will also be given to the outcomes of the Employee Assessment Reviews EAR of Officers specific training logs.
2. Team Briefings will be held regularly to ensure that Enforcement Officers are kept up to date with procedures, etc. and that they have an opportunity to discuss enforcement issues. This will be via the Focus Group meetings held quarterly. Information from the Focus Groups will be disseminated by the Team Focus Group members.
3. Enforcement Officers will be on occasions accompanied by their respective Team Manager or by the Team Manager (Health and Safety).
4. The application of the current Enforcement Management Model to any regulatory actions taken.
5. Correspondence and documentation generated by Enforcement Officers will be periodically monitored.
6. The membership and active participation of the Service in the North of Scotland Health and Safety Liaison Group and the Health and Safety Scottish Co-ordinating Group (HASCOG).

7. Liaison with Primary Authorities under the Primary Authority Scheme where appropriate.
8. Enforcement Officers will co-operate with those of other areas within the Service and the Team Manager (Health and Safety) to ensure that information is disseminated throughout as effectively as possible.
9. All enforcement action will be in accordance with the correct enforcement procedures. See appendix 1.

3. AUTHORISATION OF OFFICERS

In accordance with S18 Standards and advice, the Service recognises that only those Officers, who are appropriately qualified, experienced, and competent, should participate in health and safety enforcement.

The purpose of this section is to ensure that all Officers employed by the Environmental Health Section of Aberdeenshire Council, authorised to undertake health and safety enforcement duties under the 1974 Act, are suitably qualified, experienced, and competent to undertake duties they are authorised to perform.

All Enforcement Officers will be appointed under Section 19 of the 1974 Act. When undertaking their duties, Authorised Enforcement Officers will always be able to produce their warrant upon request.

Trainees and others who have not reached the necessary standards of experience and competence and who undertake visits to premises for the purpose of providing health and safety advice and enforcing health and safety legislation shall be appropriately supervised by a colleague who does possess the necessary standards of competence, etc.

In circumstances where the Officer is considering taking formal enforcement action, any person accompanying an Enforcement Officer to a workplace for the purpose of inspection and investigation, will also be authorised under Section 19 of the 1974 Act.

The Service also recognises that, in the context of formal enforcement action, only those Officers who have the greater experience and/or seniority in terms of responsibility should initiate such actions. In this context, the Enforcement Officer's work is subject to a continual process of monitoring and review.

Competence means the ability to perform all the activities required in health and safety to the levels of performance expected. It includes the ability to apply skill and knowledge to new situations. With Officers, it encompasses organisation and planning of the work of undertaking enforcement action in accordance with legal procedures and the interpersonal skills necessary to deal with employers and members of the public.

Competence of Officers will be assessed using the agreed LA/HSE Competence Framework for Regulators of Health and Safety. The shared Framework will assist to:

- ❖ Strengthen the regulators partnership through convergence of approaches, processes, and standards.
- ❖ Achieve better value with scope to share resources
- ❖ Confirm and demonstrate competent workforces and consistent regulation.
- ❖ Help manage business risks e.g., through ensuring appropriate attention and resources are given to maintaining regulators' competence, and
- ❖ Provide the foundation for a shared vision for long-term development.

Responsibilities

The Head of Planning and Environment, the Protective Services Manager, and the Team Manager (Health and Safety), who has responsibility for training, are responsible for the authorisation of new Officers and the extension of duties of currently employed Officers.

The Protective Services Manager is responsible for the retention and maintenance of qualification and training records for Officers authorised to undertake health and safety enforcement activities.

The Team Manager (Health and Safety) has lead officer responsibility for workplace health and safety matters.

Scope of Authorisation

The following table outlines the degree of authority afforded to various levels of Enforcement Officer operating within the Environmental Health Section of Aberdeenshire Council.

Area of Work	Scope of Permission	Comments/Conditions
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Service of advisory and warning letters.	All qualified Environmental Health Officers (EHOs). Authorised Officers and Senior Authorised Officers	All correspondence is written in the agreed style as per the Enforcement Policy and Procedures. The appropriate line manager will monitor correspondence from newly qualified Officers.
Service of Improvement Notices.	All qualified EHOs and (Senior) Authorised Officers maintaining the necessary experience and competence as per the Competence Framework and Section 18 Standards. Authorised Officers (those Officers with less than 12 months practical experience in enforcement work will work under the close supervision of a Senior EHO or Team Manager)	All Notices are subject to scrutiny by a Senior or respective Team Manager.
Service of Prohibition Notices.	All qualified EHOs and (Senior) Authorised Officers, maintaining the necessary experience and competence as per the Competency Framework and Section 18 Standards.	All Notices are subject to scrutiny by a Senior EHO or Team Manager prior to service.
Reports to the Procurator Fiscal.	All qualified EHOs maintaining the necessary CPD. (Senior) Authorised Officers, with suitable experience, may prepare reports to the Procurator Fiscal. A decision to submit a report to the Procurator Fiscal will be made with reference to the Enforcement Management Model (EMM) and in liaison with the respective Team Manager and the Lead Officer Team Manager (Health and Safety).	The preparation of all reports to the procurator Fiscal will be monitored by the Team Manager and sighted by the Lead Officer Team Manager (Health and Safety). The Environmental Health Manager will be notified of the decision to submit a report. They will also be required as Authorised Signatories.

Student Environmental Health Officers / Technical Officers

Student EHOs and Technical Officers are authorised to inspect workplaces under the supervision of a suitably qualified and experienced Officer regarding being given the knowledge, skills, qualifications and experience of the individual student / trainee.

Retention of Authorisation

For Officers to retain their authorisation to undertake health and safety enforcement activities, they shall be required to complete a minimum of 15 hours per year on workplace health and safety (Core Activities).

Activities that go towards achieving the minimum hours may include: -

- Workplace Health and Safety Inspections. *
- Involvement in Accident Investigations.
- Attendance at training courses/seminars.
- Attendance at Health and Safety Focus Group meetings.
- Participation in web-based health and safety training.

It is expected that all Officers will take the lead in two Health and Safety inspections of higher risk* premises during the year as part of their minimum requirement of 15 hours. It will be acceptable for Officers to be accompanied by a fellow Officer whilst undertaking such an inspection.

Higher risk premises are premises that by their very nature present risk to their employees and to those not in their employment.

The minimum requirement is in addition to any update training required in accordance with the provision of a Trained and Competent Inspectorate.

7. TRAINING

Records of training in respect to all Enforcement Officers undertaking health and safety shall be maintained by the Environmental Health Manager in association with the Team Manager (Health and Safety).

Records shall contain details of each Enforcement Officer's relevant qualifications, attendance at training courses and seminars (external and in-house) and at meetings of relevant liaison groups and working groups. See appendix 2.

The Team Manager (Health and Safety) shall ensure that every Authorised Enforcement Officer involved in health and safety enforcement receives the necessary update training per year based on the principal of continuing professional development.

The Team Manager (Health and Safety) shall ensure that qualified Officers, unauthorised in health and safety duties, receive the appropriate revision training and shall assess, record, manage and determine the time period for such revision training taking into account the qualifications, skills and

experience of individual Officers. The availability of such training shall be made with regard to existing workloads and to existing staff resources etc.

8. MONITORING AND REVIEW

The Policy will be monitored to ensure compliance and any complaints regarding non-compliance will be investigated fully.

The Policy will be reviewed regularly by the Specialist Officer in light of revised Guidance from the Health and Safety Executive Board.

Team Manager (Health and Safety)
20/12/21

To be reviewed in August 2023.

APPENDIX 1

INTRODUCTION

There are many forms of Enforcement Action available to Authorised Officers. These are as follows:

1. Informal action (i) verbal advice
 (ii) written advice
2. Improvement Notice
3. Prohibition Notice (Immediate or Deferred)
4. Report to the Procurator Fiscal pending prosecution.

In general, the choice of Enforcement Action will be influenced by a number of different factors:

- ◆ the seriousness of the offence
- ◆ the degree of risk
- ◆ the means of remedying the contravention
- ◆ attitude of employer
- ◆ previous record
- ◆ objective of action – compliance
 - deterrence
 - punishment

The following points must be borne in mind at all times:

1. Any action taken must be proportionate to the risk.
2. Always take the minimum option available which is likely to be effective.
3. Ask the question “Whose health and safety will be improved by my actions?” If the answer is “no-one” take no action.
4. Always have regard to the national cost implications of your local actions. Consult Primary Authority partnership schemes where appropriate.
5. Any regulatory action chosen will be determined by the application of the current Enforcement Management Model (EMM). The outcome of the key decision points is recorded using the enforcement assessment record forms.
6. Ensure that your information and procedures are correct before taking action: you may be called to court or an employment tribunal. The formal recording of the key decision points will support such actions.

NB This is good practice even for informal letters and verbal advice.

7. Even when writing informally or giving verbal advice, you must make clear which works are statutory requirements and which are only recommendations or advice.

8. With any intended formal enforcement action, reference will be made to the Primary Authority Principal as laid down by the Regulatory Enforcement and Sanctions Act 2008.

It is important for all Enforcement Officers to be able and ready to use the powers available to them and to be seen to be willing to use these powers when necessary.

VERBAL ADVICE

This is the first form of Enforcement Action and should be taken in the following circumstances:

1. There must be a breach of legislation.
2. Action can be taken which will improve health and safety standards.
3. You want that action to be taken and are confident that the employer will carry out your instructions.
4. Where previous history of the Officer's assessment, indicates a high probability of compliance.
5. This risk is easily understood and the remedy simple. This risk is not serious or imminent.

Where the only action taken is that of verbal advice, it is important for future reference that a note is made in the respective premises file and/or the APP database of the advice given.

WRITTEN ADVICE

This can only be described as an informal notice procedure and is one step up from verbal advice. The criteria for deciding to take this action are the same as for verbal advice, except that you may decide or be asked to confirm points in writing in order that they are more easily understandable, or to ensure that they will be actioned.

In all instances, Officers should follow the current guidance on procedures. The adopted standard of letters and Schedule of Works shall be used by Officers.

Letters shall clearly identify the contraventions, the actions necessary to rectify the situation, the legislation contravened, and timescales for the required works to be completed in the agreed template.

IMPROVEMENT NOTICE

An Improvement Notice should be issued if you are in any doubt that written advice will be ineffective in situations where there is non-compliance with a statutory provision or there is a serious risk and prohibition would be inappropriate.

The following procedures shall be always followed when drafting an Improvement Notice.

There must be breach of legislation, and this must be specified in the Notice.

1. The breach of legislation must be corroborated, either by other facts or by another Authorised Officer.
2. Correct procedures must be followed in case of appeal to the Employment Tribunal or prosecution for failure to comply. **The recipient of the notice has 21 days to appeal.**
3. If you witness a breach or act as lead officer, **you** sign the Notice.
4. Ensure that the correct serial number is on the Notice. This can be obtained from the central register held by the Team Manager (Health and Safety).
5. Serve the Notice on the person responsible for the breach of legislation at those premises.
6. Enter your full name, designation, and your normal working address.
7. Give the full address or be more specific if it is an extensive property e.g., greenkeeper's workshop at a golf course.
8. Always use either an employer or a self-employed person where possible. A person wholly or partly in control of premises should be reserved for Notices served under Section 4 of HASAWA 1974.
9. Detail the statutory provision, which has been contravened. State exactly the reasons for the breach e.g., "that you have failed to ensure that persons who operate forklift trucks have received adequate training".
10. Ensure that the date by which the notice must be complied with is at least 21 days from when the Notice will be served. A timescale may have been pre agreed with the person receiving the notice.
11. Ensure you fill in the name and address of anyone else a similar Notice is being served on.
12. Delete the relevant sections under the Environment and Safety Information Act, where appropriate, and sign the notice in the appropriate places including the schedule of works.
13. Make it as clear and concise as possible what you require to be done in the schedule. However, remember that there may be other ways of remedying the contraventions and the recipient must be able to satisfy the notice. After you have specified the preferred measures, the use of the phrase "or take any

equally effective measures to remove the danger/ensure compliance” will suffice.

PROHIBITION NOTICE

The use of Prohibition Notices should be reserved for situations or work activities being carried on or likely to be carried on which involves a risk of serious personal injury and are particularly dangerous. There does not necessarily have to be a statutory breach (although invariably there will be a breach of one or more of the core sections of The Health & Safety at Work etc. Act, 1974 (HASAWA)).

Prohibition Notices should take immediate effect unless there are operational reasons why such a Notice cannot be complied with, whereby a deferred notice may be appropriate.

Remember that if an appeal is lodged with an Employment Tribunal, the Notice will remain valid pending the hearing.

The following procedures should be always followed when drafting a Prohibition Notice:

1. Specify the name of the person in control of the process.
2. Insert your full name, designation, and the office from which you are working.
3. An activity must be specified. This requires careful consideration if you are using a Prohibition Notice to ensure the upgrading of articles or machinery. Officers must ensure that the activity mentioned does not inadvertently include perfectly safe activities. For example, if one meat slicer out of three is missing a blade guard, you must identify which machine you are prohibiting the use of e.g., by use of the serial number.
4. Insert the full address or the premises and, if possible, be specific about the location of the activity e.g., behind butchery counter, etc.
5. Delete one of the tenses, depending on whether the Notice is immediate or deferred.
6. Detail the statutory provision which has been contravened and, most importantly, why.
7. It is important that the Prohibition Notice is self-cancelling. For this reason, the word “until” should always be used in preference to “unless”.
8. Ensure that all sections are either completed or deleted.
9. Delete the relevant sections under the Environment and Safety Information Act, where appropriate, and sign the notice in the appropriate places including the schedule of works.

10. Where possible, a Schedule should be attached detailing exactly what needs to be done to comply with the Notice. Again, the same standard phrase as for the Schedule for Improvement Notices may be included at the end.

SERVICE OF NOTICES

1. All Notices should be checked for accuracy and legality by Lead Officer, the Area Team Manager, or the Team Manager (Health and Safety). This should pose no problem of timescale for Improvement Notices. However, a draft of Prohibition Notices should be sent for approval. If the Lead Officer is unavailable, notices should then be checked by the respective Team Manager.
2. The first copy of any Notice, typed or written, should be the one served. The second copy should be forwarded for the central register/file, and other copies obtained by photocopying. In general, the following copies may be required:
 - (a) The first copy is the one served.
 - (b) The second copy is retained on the central register, if applicable.
 - (c) A photocopy may be held in the Area Office Premises file.
 - (d) A copy must be given to the employees – either a representative if appropriate or posted on a staff notice board.
3. The information on appeals will be detailed on each notice served to allow appeals to be made.
4. If you have no corroborative evidence of the breaches specified in the Notice, the Notice should be served by hand with an authorised witness to corroborate both service of Notice, and the breaches or dangerous practices.
5. If you already have the corroborative evidence of another Officer or from another source, the Notice may be served by post or by the Lead Officer by hand. **In such cases, Notices by post must be sent by Recorded Delivery.**

REPORTS TO PROCURATOR FISCAL

Prosecution should be considered as the ultimate sanction, and reports should not be made on a routine basis.

When considering the submission of a report to the Procurator Fiscal, details must first be discussed with the Lead Officer the Team Manager (Health & Safety) and/or the Environmental Health Manager to ensure that correct procedures have been followed, and that the case will be worthwhile.

Reasons for Reporting

Whilst the following list is not exhaustive, neither is it intended that a report will be sent to the Procurator Fiscal every time one of the criteria is met. However, officers may find this guidance useful:

- (a) There has been a serious breach, which resulted, or could have resulted, in a fatality.
- (b) There has been a serious breach, which resulted in a major injury.
- (c) There has been a serious breach, which could have resulted in a major injury, and no steps have been taken to prevent recurrence.
- (d) The employer is unwilling to address issues about safety. (**NB** this will often be failure to comply with a Notice).
- (e) The employer, manager, or employee has repeatedly contravened despite advice and warnings.
- (f) Where there has been a particularly blatant disregard by employers, employees, or others of their responsibilities under Health & Safety legislation.
- (g) Where an employer has failed to comply with an Improvement Notice or Prohibition Notice.

In deciding whether to submit a report for the Procurator Fiscal, the following factors will also be considered:

- 1) The gravity of the offence, in the context of the consequences or potential consequences for the health and safety of employees or any other person exposed to the hazard.
- 2) There has been a blatant disregard for the Law particularly where the economic advantages of breaking the Law are substantial and the Law abiding are placed at a disadvantage to those who disregard it.
- 3) The general record and approach of the offender.
- 4) Whether it is desirable to be seen to produce some public effect, including the need to ensure remedial action and through the punishment of offenders, to deter others from similar failures to comply with the Law.
- 5) Whether the evidence available provides a realistic prospect of conviction.
- 6) Whether the contravention in question has caused serious public harm.
- 7) Where the employer or person in control of the work activity or premises concerned has failed to take reasonable steps to control the risks.
- 8) Whether there are persistent poor standards for controlling safety of health hazards.

Rules of Evidence

When taking evidence, the following should be borne in mind:

1. All evidence must be corroborated, so take along another Authorised Officer
2. The accused must have contravened one or more statutory requirements.
3. The evidence must prove the contraventions.

When taking physical evidence, you must leave a receipt (in the form of a notice under S.20(2)(l) and 20(6)). If the article or substances can be split, do so, label and seal it, and leave a portion with the person responsible for the premises.

Photographic and video evidence must be corroborated. The date and time should be overlaid on video and digital photography.

Statements

- (a) When requiring a Witness to give a statement under Section 20, do **not** caution the Witness, as the statement cannot be used against that person. Always use the statement forms available and take another Officer to corroborate the signature.
- (b) If you come to a point in the interview where you think you will be reporting that person to the Procurator Fiscal, it is always advisable to take two statements i.e., finish the statement you have required under Section 20 before going over the same questions under caution. Although the former statement cannot be used, you should include it with the background notes in your report, as it may convince the Procurator Fiscal to take the case.
- (c) On obtaining information under caution, this must all be corroborated from a separate source i.e., get another member of staff to confirm even the most trivial of admissions (e.g., "I am the manager").

All reports to the Procurator Fiscal must be in the electronic format described by the Crown Office. Reference should be made to the Crown Office document entitled "Reports for the Procurator Fiscal – A Guide for Non-Police Reporting Agencies". You should also include the following:

- 1) A draft charge sheets
- 2) Copies of the ISCJIS SCRO Records (Form A: Subject Details sheet and Form B: Charge Detail sheet)
- 3) Copies of relevant legislation
- 4) Copies of any relevant documentation e.g., warning letters
- 5) Copies of all statements
- 6) A summary of the case, bearing in mind that it may have to be read in Court by a Depute Fiscal who may have no knowledge of the case. The summary should therefore **be brief (1 page maximum), to the point, and readily understandable by both the Procurator Fiscal and the Sheriff.**

The report should normally be submitted to the Procurator Fiscal within 3 months of the offence. You should therefore aim to pass the finished document to the Lead Officer the Team Manager (Health & Safety) within 11 weeks to allow for checking by him, the Head of Service, and, if relevant, Legal and Governance Services.

Regarding fatal accidents, the same timescales must be observed, with the addition of an interim report 1 month after a work-related death.

PENALTIES FOR HEALTH AND SAFETY OFFENCES

The Health and Safety at Work etc Act 1974 (the HSW Act), Section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an Improvement or Prohibition Notice, or a Court Remedy Order (issued under the HSW Act, Section 21, 22 and 42 respectively):

Lower Court maximum	£20,000 and/or 12 months imprisonment
Higher Court maximum	Unlimited fine and/or 2 year's imprisonment

Breach of Sections 2-6 of the HSW Act, which set out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

Lower Court maximum	£20,000
Higher Court maximum	Unlimited fine

Other breaches of the HSW Act, and breaches of "relevant statutory provisions" under the Act, which include all health and safety regulations. These impose both general and more specific requirements, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment:

Lower Court maximum	£5,000
Higher Court maximum	Unlimited fine

Contravening licence requirements or provisions relating to explosives.

Licensing requirements apply to nuclear installations, asbestos removal, and storage and manufacture of explosives. All entail serious hazards which must be rigorously controlled.

Lower Court maximum	£5,000
Higher Court maximum	Unlimited fine and/or 2 year's imprisonment

On conviction of directors for indictable offences in connection with the management of a company (all the above, by virtue of the HSW Act Section 36 and 37), the courts may also make a disqualification order (company Directors Disqualification Act, 1986, Sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and Safety Inspectors draw this power to the court's attention whenever appropriate.

Lower Court maximum	5 years disqualification
Higher Court maximum	15 years disqualification

Team Manager (Health and Safety)
17.12.21

APPENDIX 2

NAME		AREA		CONTACT PHONE NO	
DATE	CPD EVENT/ACTIVITY	HOURS	CORROBORATED BY	CUMULATIVE HOURS	

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I CERTIFY THAT THIS IS A TRUE AND CORRECT RECORD OF MY
CURRENT CPD ACTIVITY AS DEFINED IN THE **CPD REGULATIONS AND
CODE OF PRACTICE**

Signed: