



ORKNEY
ISLANDS COUNCIL

Orkney Islands Council

Planning and Community Protection Service

Environmental Health

Health and Safety Service and Intervention Plan for 2022/23

Background and purpose of this document

This document summarises how Orkney Islands Council (The Council) will meet its responsibilities as a health and safety regulator and how it will focus resources and activities according to risk and identified priority topics. It does not deal with the council's duties as an employer under the Health and Safety at Work etc Act 1974.

The Council recognises its statutory role as a health and safety regulator and its duty to comply with mandatory guidance issued under section 18 of the Health and Safety at Work etc Act 1974. This includes producing a health and safety service intervention plan (this document) setting out the council's approaches to targeted health and safety interventions. The Council also acknowledges and accepts the statement of commitment between HSE and local authority regulators and will work jointly with other regulators and employers to maintain and improve standards of health and safety at work.

Role of the council as a regulator.

The Council has a statutory duty to make adequate arrangements for the enforcement of health and safety law and to legally appoint suitably qualified Inspectors to carry out the range of regulatory duties for which they have been appointed. Within the council, officers from environmental health are appointed to carry out these duties.

Businesses and organisations are responsible for managing the risks they create to workers and the public who might be affected by their work activity. This applies to all businesses, no matter how large or small.

The role of the Council as a health and safety regulator is to support, encourage, advise and where necessary hold to account businesses to ensure that duty holders effectively manage the occupational health and safety risks they create. As a regulator the council is expected to ensure best use of resources and to help improve the effective management of work related health and safety risks in a proportionate way.

The council will achieve this through choosing the most appropriate way of influencing "risk creators" and by targeting interventions, including inspection, investigation and enforcement activity, on those businesses and sectors that represent a higher level of risk to the health and safety of workers and the public.

Enforcement of health and safety law is split between Health and Safety Executive (HSE) and Local Authorities as set out in the Health and Safety Enforcing Authority Regulations 1998. This means, within the county of Orkney, the Council will be the enforcing authority for premises where the main activity is set out in schedule 1 to the regulations, as summarised in appendix 1.

The HSE are national co-regulator, based in Aberdeen. Therefore, following discussions given the location of Orkney it is recognised that it is not unreasonable to expect informal approaches from the HSE for council officers to assist with local knowledge and instigating local contacts, as and when the need arises.

The council also has other roles in connection with local businesses aside from health and safety regulation, and subject to data protection, such roles may assist in identifying and remedying matters of evident concern. Example roles include being the Licensing Authority, the Food Law Authority, a Category 1 responder for the Civil Contingencies Act, Trading Standards Authority, Local Housing Authority, and the Local Planning Authority. Therefore, the council's work can have an impact on wider public health outcomes, reduction of health inequalities, and contributing to delivering the growth/covid recovery agenda. Council officers can therefore provide invaluable advice to receptive new business through either specific advice, visits or signposting.

As a regulator and in line with the enforcement policy, the Council can use a full range of "interventions" from advice and guidance through to formal enforcement action to influence behavioural change in the way business manages or undertakes its work and compliance with health and safety law. Fundamentally this means targeting interventions on those work activities that give rise to the most serious risks or where the hazards are least well controlled. The council will not invest limited resources on matters of comparatively low risk unless, of course, they are matters of evident concern.

Interface between the council as a regulator and employer

As Orkney Islands Council is also an employer and therefore a duty holder for health and safety legislation as well as a regulator, particular care will be taken to avoid any perceived or actual conflicts of interest arising from these two roles. To help manage this, the council will use the following:

- Recognising that conflicts of interest could be real or perceived and unless managed properly they can undermine health and safety regulation and the council's reputation
- Clarity in the enforcement policy showing how potential conflicts of interest are to be practically managed
- Organisational and procedural systems which enable the council's regulatory team to demonstrate that they can and do act as an independent enforcing authority in connection with inspection, investigation or enforcement
- A Managerial culture in which senior managers and members are unable to influence regulatory officers to act in a way which is contrary to the law or enforcement policy

- Recognising the personal independence of officers by enabling Inspectors (and the legal officers providing support to them) that are, (or are potentially) involved in investigations to not be involved in giving corporate health and safety advice, including to council contractors and arms length organisations
- Proactive communications meaning the council will be proactive, open and transparent in communicating how it deals with conflicts of interest with all interested parties

The council recognises it is expected to maintain a strong deterrent against those businesses who fail to meet their health and safety obligations and put their employees or the public at material risk thereby also deriving an unfair competitive advantage.

Key components of the council's health and safety service intervention plan

In order to prioritise resources, comply with mandatory guidance and protect the public, whilst recognising that businesses and organisations who create risks are best placed to identify and manage them, the council will:

- Prepare an annual risk-based service intervention plan focussed on tackling specific risks;
- When considering the risks that need to be addressed, utilise the whole range of interventions to target these specific risks;
- Recognise the different roles the Council undertakes, and provide clarity on the separation of such roles, particularly where one business has contact from more than one council service area in relation to a particular topic;
- Reserve unannounced proactive inspection only for the activities and sectors that are nationally agreed (see appendix 2) or where intelligence suggests risks are not being effectively managed;
- Use national and local intelligence to inform work priorities;
- Have trained and competent officers who can exercise professional judgement to:
 - Differentiate between different levels of risk or harm;
 - Decide how far short a business has fallen from managing the risks it creates effectively;
 - Apply proportionate decision making in accordance with the Enforcement Policy, HSE's Enforcement Policy Statement and the Enforcement Management Model.

- Identity personal CPD needs in order to keep themselves up to date and competent, having regard to the nature of the work and regulatory risk portfolio
- Use nationally developed incident selection criteria to determine which incidents will be selected for investigation (see appendix 3);
- Use a risk-based approach to complaint handling;
- Publish successful enforcement action;
- Promote and utilise the Regulatory Challenge Panel;
- Keep records and complete the annual LAE1 return

Work activities and outcomes for the financial year 2022/23

This section sets out the work activities which the Environmental Health team will undertake during 2022/23 as a health and safety regulator.

1. We will undertake proactive inspections/visits

Proactive visits or inspections have long been a key component of health and safety regulation, however they are resource intensive and can be counter productive if they do not focus on real and genuine risk. Therefore, the council will reserve proactive inspections for health and safety compliance to:

- a) High risk premises/ activities shown in appendix 2
- b) Locally identified potential poor performers where specific local intelligence indicates that a business is failing to effectively manage risk, especially if it relates to an activity listed in appendix 2 or a national priority.
- c) Matters directly communicated to the Council for urgent attention as a result of new intelligence arising from an incident/investigation at a national level

2. We will select incidents for investigation

The law requires certain incidents to be reported to the council as an enforcing authority, however there is not a legal duty placed on the council to investigate. We will use the criteria in appendix 3 to determine whether or not a work related incident should be investigated (regardless of whether it was correctly notified)

3. We will raise awareness of national issues of concern, including:

- (a) Raising awareness of the work-related stress and mental health campaign 'Working Minds' with businesses which runs between 16 November 2021 and 31 January 2023
- (b) In connection with Construction work and to support HSE who are the relevant enforcing authority
 - Duty to manage asbestos
 - Falls from height, work on or near fragile roof surfaces
 - Health risks of respirable silica dust
 - Health risks from moving and handling construction materials

4. We will have regard to the following national priorities when going about our other work, as the circumstances arise

- Electrical safety in hospitality settings
- Visitor attractions to prevent or control ill health arising from animal contact
- Inflatable amusement devices
- Gas safety in commercial catering premises
- Pesticides
- Spa pools and hot tubs on display
- Welfare provision for delivery drivers
- Work related road safety
- 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

We will particularly focus on Matters of Evident Concern (MECs) in connection with these topics - which are defined as those that create a risk of serious personal injury or ill-health and which are observed (i.e., self-evident) or brought to the inspector's attention.

5. We will provide advice and guidance (especially for new businesses) using the following methods

- Council website
- Provision of advice and guidance as part of promotions and campaigns
- Specific visits, upon request and subject to resources and priorities

- Signposting duty holders to further sources of advice, for example through industry bodies, HSE website and other specialist resources.

Appendix 1. Extract from the Health and Safety (Enforcing Authority) Regulations 1998

Note this appendix is a summary, and needs to be read in conjunction with the full regulations

MAIN ACTIVITIES WHICH DETERMINE WHETHER LOCAL AUTHORITIES WILL BE ENFORCING AUTHORITIES

1. The sale of goods, or the storage of goods for retail or wholesale distribution, except—

(a) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises, an airport or a railway;

(b) where the main activity is the sale or storage for wholesale distribution of any substance or preparation dangerous for supply;

(c) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas;

and for the purposes of this paragraph where the main activity carried on in premises is the sale and fitting of motor car tyres, exhausts, windscreens or sunroofs the main activity shall be deemed to be the sale of goods.

2. The display or demonstration of goods at an exhibition for the purposes of offer or advertisement for sale.

3. Office activities.

4. Catering services.

5. The provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers.

6. Consumer services provided in a shop except dry cleaning or radio and television repairs, and in this paragraph “consumer services” means services of a type ordinarily supplied to persons who receive them otherwise than in the course of a trade, business or other undertaking carried on by them (whether for profit or not).

7. Cleaning (wet or dry) in coin operated units in launderettes and similar premises.

8. The use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or other cosmetic services and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner, a dentist registered under the Dentists Act 1984(1), a physiotherapist, an osteopath or a chiropractor.

9. The practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities except where the main activity is the exhibition of a cave to the public.

10. The hiring out of pleasure craft for use on inland waters.

11. The care, treatment, accommodation or exhibition of animals, birds or other creatures, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity or veterinary surgery.

12. The activities of an undertaker, except where the main activity is embalming or the making of coffins.

13. Church worship or religious meetings.

14. The provision of car parking facilities within the perimeter of an airport.

15. The provision of child care, or playgroup or nursery facilities.

Appendix 2. Matters suitable for proactive inspections within Orkney, based on LAC 67 (rev) and local business profile.

Business activity	Area of focus for risk management
Communal/amenity buildings on caravan/camping parks with buried metal LPG pipework	Caravan/camping parks with poor infrastructure risk control/management of maintenance
Open Farms/Animal Visitor Attractions	Lack of suitable micro-organism control measures
Industrial retail/wholesale premises	Poorly managed workplace transport/ work at height/cutting machinery /lifting equipment
	Exposure to excessive noise
	Exposure to respirable crystalline silica (Retail outlets cutting/shaping their own stone or high silica content 'manufactured stone')
	Exposure to all welding fume regardless of type or duration may cause cancer. (e.g., Hot cutting work in steel stockholders) Exposure to be controlled with LEV and or appropriate RPE.
In-store bakeries and retail craft bakeries where loose flour is used and inhalation exposure to flour dust is likely to frequently occur	Tasks where inhalation exposure to flour dust and/or associated enzymes may occur e.g., tipping ingredients into mixers, bag disposal, weighing and dispensing, mixing, dusting with flour by hand or using a sieve, using flour on dough brakes and roll machines, maintenance activities or workplace cleaning.
Large scale public gatherings e.g., cultural events, sports, festivals & live music	Lack of suitable planning, management and monitoring of the risks arising from crowd movement and behaviour as they arrive, leave and move around a venue
Commercial catering premises using solid fuel cooking equipment	Lack of suitable ventilation and/or unsafe appliances
Premises with vulnerable working conditions (lone/night working/cash handling e.g., betting shops/off-licences/hospitality) and where intelligence indicates that risks are not being effectively managed	Lack of suitable security measures/procedures. Operating where police/licensing authorities advise there are local factors increasing the risk of violence at work e.g., located in a high crime area, or similar local establishments have been recently targeted as part of a criminal campaign
Professional Firework Display Operators	Poorly managed fusing of fireworks

Appendix 3. Incident selection criteria

This *operational appendix* gives guidance to officers appointed as Inspectors under the Act, it will also be of interest to employers, employees, trade union safety representatives and legal advisors.

Preliminary

Officers will need to discern if the matter in question falls to the local authority for health and safety regulation or if it should be referred to another appropriate enforcing authority.

Not every incident reported will require investigation after initial enquiries have been made. Incidents may also come to light that should have been reported, and the criteria below can be used to determine if any such incidents should be investigated, keeping in mind it is an offence and potentially an indicator of poor safety management to not notify and incident in accordance with the regulations.

The criteria for selecting incidents suitable for further investigation are detailed below.

General

When determining if an incident (either notified, notifiable or workforce/trade union complaint) should be selected for investigation, Officers will generally have regard to the following:

- severity and scale of potential or actual harm;
- seriousness of any potential breach of the law;
- duty holder's known past health and safety performance;
- enforcement priorities;
- practicality of achieving results; and
- wider relevance of the event, including serious public concern, including its status as a priority topic [within the context of LAC 67 rev]

Incidents that will always be selected for investigation

Fatalities (Work-related deaths):

- All work-related accidents which result in the death of any person, including non-workers. "Accident" specifically excludes suicides and deaths from natural causes.
- Other deaths arising from a preventable work-related cause, where there is a likelihood of a serious breach of health and safety law, and where it is appropriate for enforcing authorities to investigate.

This will be undertaken in accordance with the Work Related Death Liaison Protocol and working with the COPF, police and other enforcing authorities as appropriate.

All work-related accidents resulting in a "Specified Injury" as described in regulation 4(1) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) to any person, including non-workers, that meet any of the following conditions:

- Serious multiple fractures (more than one bone, not including wrist or ankle);
- All amputations other than amputation of digit(s) above the first joint (eg fingertip);
- Permanent blinding in one or both eyes;
- Crush injuries leading to internal organ damage, eg ruptured spleen;
- Any burn injury (including scalding) which covers more than 10% of the surface area of the body or causes significant damage to the eyes, respiratory system or vital organs;
- Any degree of scalping requiring hospital treatment;
- Loss of consciousness caused by head injury or asphyxia;
- Any injury arising from working in an enclosed space which leads to hypothermia or heat induced illness, or requires resuscitation or hospital admittance for more than 24 hours.

Cases of Occupational Disease:

The following notifications of cases of occupational disease, other than those arising from circumstances or situations which have already been investigated:

- All reports of cases of occupational disease which are reportable under RIDDOR Regulations, specifically:
 - Carpal Tunnel Syndrome,
 - cramp in the hand or forearm,
 - occupational dermatitis,
 - hand arm vibration syndrome,
 - occupational asthma,
 - tendonitis or tenosynovitis in the arm or forearm,
 - any cancer attributed to an occupational exposure to a known human carcinogen or mutagen,
 - any disease attributed to an occupational exposure to a biological agent.
- Other reports of cases of occupational disease with the potential to cause death or a "serious health effect" as defined in the Enforcement Management Model (EMM), and which arise from working practices that are likely to be ongoing at the time the report is made.

Serious incidents

Incidents which indicate a likelihood of a serious breach of health and safety law:

This includes any incidents considered liable to give rise to serious public concern, where, from the facts known, the application of the EMM would give rise to an initial enforcement expectation of a notice or a prosecution.

For any mandatory incident that is not investigated, a decision record should be completed to explain the reasons for non-investigation. A senior manager should be involved in any decision with the Inspector.

The grounds for not investigating incidents that would normally be investigated may include:

- where an investigation is impractical, eg unavailability of key witness(es), key evidence is no longer available;
- no reasonably practicable precautions available to prevent the incident\accident or its recurrence;
- investigating the accident will mean the Local Authority will be acting ultra vires;
- there is a conflict of interest between the LA as a regulator and duty holder, in which case the appropriate enforcing authority should be notified, or
- inadequate resources due to other priorities.

Discretionary investigations

Those incidents not falling into the above criteria for mandatory investigation may be investigated at the local authority's discretion when taking into account the following factors:

- the incident may not have caused a RIDDOR defined major injury but is either in accordance with HSE's national guidance to LAs on targeting interventions ([LAC 67/2](#)) or one which arises from a specific health and safety initiative that may be contained within the Local Authorities Service Plan;
- the poor health and safety track record of the duty holder and whether or not there has been a history of similar events;
- the incident has the potential for high public profile\media attention or has received considerable media attention leading to reputational risk through inaction\perceived inaction;
- the incident may give rise to complaint(s). Depending on the circumstances, this should be dealt with as a normal complaint procedure and not necessarily require a full incident investigation unless found to be appropriate, or any incident that has been identified as being useful for –
 - enhancing sector good practice\technical knowledge or
 - training and developing staff as recognised from any Regulators' Development Needs Analysis (RDNA) discussions.

For further information

LAC 22-13

Work related death protocol for liaison

HSE Enforcement Guide (Scotland)

LAC 22-10