

Committee(s):	Date(s):
Port Heath & Environmental Services Committee	12 th November 2013
Subject: Implications of the National Local Authority Enforcement Code - Health and Safety at Work - England, Scotland & Wales for the future of health & safety enforcement in the City of London	Public
Report of: Director of Markets & Consumer Protection	For Decision
<u>Summary</u>	
<p>This report seeks to set out the implications for the future of health & safety enforcement in the City of London following the publication of the Health & Safety Executive's statutory guidance; "National Local Authority Enforcement Code - Health and Safety at Work - England, Scotland & Wales".</p> <p>It sets the Code in its recent historic context and proposes two options for Members to consider concerning future enforcement arrangements.</p> <p>Recommendation</p> <p>Members are asked to approve the recommendation that:</p> <ul style="list-style-type: none"> • The City Corporation should continue its risk-based regulatory approach by supporting, encouraging, advising and where necessary taking enforcement action against, businesses to ensure that; • They effectively manage the occupational health & safety risks they create and; • That this should be based upon a greater gathering and use of intelligence to inform service planning intervention and project selection in the future 	

Main Report

Background

1. Health & safety enforcement in the UK is split between the Health & Safety Executive (HSE) – predominantly construction, industrial, manufacturing and public services - and local authorities – dealing mainly with retail, catering, office and leisure sectors. As a Health & Safety Enforcing Authority, the City Corporation is required by mandatory guidance issued by the HSE under Section 18 of the Health & Safety At Work Etc. Act 1974, to carry out the full range of health & safety enforcement duties in its local authority role.
2. For a number of years, the HSE and local authorities have worked effectively in partnership, focussing on the key issues which affect UK workplaces:-

- slips & trips;
- musculoskeletal disorders¹;
- falls from height;
- workplace transport;
- work-related stress; and
- asbestos management.

and each targeted at high risk businesses for which they are the enforcing authority, but tempered their approach with local knowledge and local intelligence on accidents, injuries and complaints.

3. Given the unique make-up of the City of London, we have for many years ensured that these issues were focused upon, but in a City context. We were the only local authority in the country which comprehensively dealt with Display Screen Equipment-related musculoskeletal disorders in the financial services sector, and their emerging relationship with work-related stress. Our ground-breaking work on the Management of Contractors has been reported to your Committee previously, and our expertise with the risk of Legionnaires' disease from Cooling Towers and Water Systems is renowned nationally through our involvement with industry forums and the training of both other local authority and the HSE's own inspectors.
4. However, a new enforcement approach is now required and the amount of permitted inspection-based health & safety regulatory activity has been severely curtailed by changes in Government policy.

Changes in Government Policy

5. In March 2011, the Government announced its plans for reforming the UK's health & safety system with the publication of "**Good Health and Safety, Good for Everyone**" responding to Lord Young's report, "**Common Sense, Common Safety**"). Whilst protecting people in the workplace and in society as a whole remained a key priority, the focus moved to a "lighter touch approach", concentrating on higher risk industries and on tackling serious breaches of legislation and which required the HSE and local authorities:-
 - to reduce the number of inspections carried out;
 - to have greater targeting where proactive inspections continue; and
 - to increase information provision to small businesses in a form that is both accessible and relevant to their needs.
6. The Local Government Group (LGG) and the HSE subsequently published their joint guidance, "**Reducing Proactive Inspections**", in May 2011, setting out how local authorities were now expected to plan their proactive health & safety interventions so as to continue to deliver both local and national health & safety priorities, but remaining within the Government's new overall policy framework.

¹ Ranging from back pain caused by poor manual handling to repetitive strain injuries from excessive use of Display Screen Equipment (DSE)

7. In November 2011, the HSE amended their mandatory Local Authority Circular (LAC) 67/2 (revision 3) which assigns risk ratings to businesses based upon their level of compliance; it further reinforced Government policy that only seriously non-compliant businesses should continue to be fully inspected.
8. The remainder should only visited after a suitably serious accident or incident or complaint or other intelligence had been received to indicate that they were a poor performer and that a variety of interventions types should now be deployed. Table One sets out how the City responded, illustrating that for a number of these intervention types we were already undertaking such an approach.

Intervention	Key Activities	City Corporation Examples
Partnerships	Strategic relationships between organisations or groups who are convinced that improving health and safety will help them achieve their own objectives.	<ul style="list-style-type: none"> • Cleaning Industry Liaison Forum • London Banks' Health & Safety Forum • Engaging in Primary Authority Partnerships advising <i>CBRE</i>, <i>Virgin Active</i> on their health & safety management systems
Supply Chain	Encouraging those at the top of the supply chain (who are usually large organisations, often with relatively high standards) to use their influence to raise standards further down the chain.	<ul style="list-style-type: none"> • Primary Authority Partnerships – <i>CBRE</i>, <i>Virgin Active</i> • Legionella Control Association • Cleaning Industry Liaison Forum •
Design & Supply	Working with those who can improve health and safety by improving the design of processes or products.	<ul style="list-style-type: none"> • Legionella Control Association • Safety Thirst
Education & Awareness	<p>Seeking further ways of getting messages and advice across early to key target groups, particularly those who are difficult to reach, using channels such as small business groups, chambers of commerce etc.</p> <p>Promoting risk education as a curriculum item at all levels of the education system.</p>	<ul style="list-style-type: none"> • Legionella Control Association Open Day • Presenting at professional – e.g. CIEH - seminars • CBRE FM Managers Conference • Delivering training on Cooling Towers to EHOs and HSE Inspectors from London and the UK
Intermediaries	<p>Enhancing the work done with people and organisations that can influence duty holders.</p> <p>These may be trade bodies, their insurance companies, their investors or other parts of government who perhaps are providing money or training to duty holders.</p>	<ul style="list-style-type: none"> • Cleaning Industry Liaison Forum • London Banks' Health & Safety Forum • Legionella Control Association • Safety Thirst

Table One

9. At the same time, the Government published "***Reclaiming health and safety for all: An independent review of health and safety regulation***" (The

Löfstedt Review) which looked at the scope and application of UK health & safety regulation, focusing on areas where evidence showed that regulation had resulted in unnecessary costs to business.

10. Professor Löfstedt's overall conclusion was that there is no evidence for radically altering current health & safety legislation but nevertheless, he still made 26 recommendations for improving legislation and the way it is enforced. One of these recommendations was of particular relevance to local authorities and concerned the ability of the HSE to direct local authority activity, recommending that:

'Legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky businesses'.

11. The Government fully supported the above recommendation as it would give greater consistency, though it also continued to recognise the important role local inspectors had in using their knowledge and experience to engage with businesses across a range of regulatory issues, as we were doing in the City.
12. Finally, the following actions were taken to bring the City Corporation's health & safety enforcement in line with Government and HSE policy:-
 - food safety and health & safety inspections were previously undertaken simultaneously, but were now only undertaken for health & safety if businesses are deemed high risk though our Environmental Health Officers still dealt with 'matters of evident concern' during each visit; and
 - the HSE's Incident Selection Criteria were adopted when dealing with all RIDDOR² accidents reported to us, and for prioritising health & safety complaints.

The Current Position

13. In June 2013, the HSE published the "[National Local Authority Enforcement Code - Health and Safety at Work - England, Scotland & Wales](#)" (the Code) along with a [List of Activities](#) and [Supplementary Guidance](#) on the Code's application.
14. The effect of this mandatory guidance from the HSE effectively prevents local authorities from inspecting anywhere other than those prescribed hazards and activities in the type of businesses set out in the List of Activities unless they have good reason to do so. This does not take into account crucial issues for City workers identified by the 2012 City Workers Health Research Report and which have now been included for action in the **City of London Joint Health & Wellbeing Strategy**:-
 - stress, anxiety, depression and other mental health issues;
 - alcohol abuse; and
 - smoking

² Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013

in order to prevent ill- health, reduce sick days and improve the productivity of City businesses and make the City of London and lead the way as an exemplar for workplace health.

Impact

15. There has been considerable discussion amongst the health & safety regulatory community since the publication of the Code. The City Corporation has been integral to these discussions through the All-London Boroughs Health & Safety Liaison Group with the aim of achieving a consistent approach for London, and in establishing peer review frameworks to provide independent assurances that the requirements of the Code are being met.
16. Many of the activities and businesses on the prescribed list are not commonly found in the City, - e.g. enteric disease risks at open farms or explosion risks from leaking Liquid Petroleum Gas (LPG) pipework at caravan parks. However, some of the identified hazards are found in the City and these will require our intervention. Examples are set out Table 2 below:-

Hazards	High Risk Sectors	High Risk Activities	Possible City intervention
Legionella infection	Premises with cooling towers / evaporative condensers	Lack of suitable legionella control measures	City currently has 150+ 'live' cooling tower sites
Fatalities / injuries resulting from being struck by vehicles	Tyre fitters/ MVR* (as part of Car Sales) High volume Warehousing/Distribution	Use of two post vehicle lifts Workplace transport	London Central Market (Smithfield)
Fatalities / injuries resulting from falls from height / amputation and crushing injuries	Industrial retail / wholesale premises - e.g. steel stockholders, builders / timber merchants	Workplace transport / work at height/cutting machinery / lifting equipment	London Central Market (Smithfield)
Falls from height	High volume warehousing / distribution	Work at height	London Central Market (Smithfield)
Carbon monoxide poisoning	Commercial catering premises using solid fuel cooking equipment	Lack of suitable ventilation and/or unsafe appliances	Commercial kitchens throughout the Square Mile (approx 900 at any one time)
Crowd control & injuries/fatalities to the public	Large scale public events/sports/leisure facilities e.g. motorised leisure pursuits including off road vehicles	Inadequate consideration of public safety - e.g. poor organisation and/or supervision of high speed or off-road vehicle movements	Events held within the City such as high speed cycle races

Table Two

17. However, the List of Activities for proactive inspections does not include a number of activities which are very specific to the City of London and high risk, such as high level window cleaning from ropes or cradles and the management of asbestos, and it these which we seek your Committee's approval to continue intervening on.

Options

18. The options available for future health & safety enforcement by the City Corporation are:

Option A: To modify our Health & Safety Intervention Plan next year to take account of these changes in Government policy and the HSE's mandatory advice, and to focus solely upon those activities and business sectors that are prescribed therein; or

Option B: To carry on with local projects as currently do, intervening in premises and on activities which we feel pose a risk to the employees and the wider public – (e.g. high level working such as window cleaning including rope access) – based upon local intelligence, gathered from a variety of sources.

In order to undertake Option B, we need to become smarter at gathering the intelligence that suggests a business is a poor health & safety performer and collate more site intelligence - e.g. adverse lift insurance reports, HSE Safety Alerts on activities or plant and equipment, site specific observations during other regulatory activity, etc

19. As our resources are limited, the following important principles must be born in mind during any of our activities;-
- sensible risk management should always focus activity on the highest risks and poorest performers;
 - all interventions should push businesses towards compliance and self-regulation;
 - proactive inspections are not the only solution - *there are some other ten intervention types that should be considered from the Supplementary Guidance*; and
 - there should be no inspection without a valid reason which may be that there is intelligence which indicates that they may be a poor performer – *e.g. a Category A rating in the HELA LAC 67/2 "Advice/Guidance to Local Authorities On Targeting Interventions"*.
20. However, we do run the risk of having our actions appealed to the HSE's Regulatory Challenge Panel for allegedly not having good reason to carry out an intervention, as under the Code, businesses are now entitled to appeal against all forms of enforcement action taken against them if they feel that it was not warranted and without any good reason.

Recommendations

21. Members are asked to approve the recommendation that:-
- The City Corporation should continue its risk-based regulatory approach by supporting, encouraging, advising and where necessary taking enforcement action against, businesses to ensure that;
 - They effectively manage the occupational health & safety risks they create; and;
 - That this should be based upon a greater gathering and use of intelligence to inform service planning intervention and project selection in the future..

Conclusion

22. Both of the above Options will comply with the requirement to have a risk-based regulatory approach as we have always done but in choosing Option B, by making greater use of intelligence now to inform our project work, we can deal with more of the higher, City-specific risks.
23. Whilst the Code and its activities and business sectors in the List of Activities may appear rather restrictive from a City point of view, the opportunity now presents itself to harness and utilise intelligence gathered from a wide variety of sources to target more effectively the highest health & safety risks in the Square Mile.

Corporate & Strategic Implications

24. When local authorities were originally required by the Government to reduce health & safety inspection work, we utilised that capacity to generate income through our Primary Authority Partnership work and through our innovative Cooling Towers Inspection Training courses. We are mindful though that some of that income could reduce over time and therefore leave surplus resources as potential savings in the future
25. Conversely though, with the intelligence-based approach advocated above, our intervention work in the highest risk businesses may well expand yet to not suitably resource it, could create a potential reputational risk from the perceptions of City workers who may feel that they are no longer sufficiently protected by their local health & safety regulatory regime.
26. Finally there is the risk of a possible challenge to the HSE's Independent Regulatory Challenge Panel³ who look at complaints regarding advice given about health & safety matters which might be incorrect or go beyond what is required to control the risk and which includes over-stepping the mandatory guidance of the Code and intervening in businesses without a good reason; this risk will be mitigated by using sound intelligence feedback by competent officers

³ www.hse.gov.uk/contact/challenge-panel.htm

of the City Corporation who have been briefed on what City-specific issues to look for when they are out on site.

Appendices:

None

Background Papers:

Future challenges to health & safety enforcement in the City of London – report to the PH&ES Committee – January 2012

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