

Local authorities and health and safety

**All-Party Parliamentary
Group on Occupational
Safety and Health**

Background

The responsibility for enforcing workplace health and safety in the workplace is shared between several regulators. There are specialist agencies for some specialised sectors such as rail, air, nuclear and maritime, but generally the enforcement activity for most workplaces is split between the Health and Safety Executive (HSE) and local authorities.

The local authority workplace health and safety enforcement is done through environmental health officers who are also responsible for many other enforcement areas including food safety, housing and environmental nuisance.

In addition, local councils have responsibility for ensuring the safety of goods that are on sale and being imported. This includes equipment being used in the workplace, such as machinery and personal protective equipment.

This report summarises a number of issues that the All-Party Parliamentary Group on Occupational Safety and Health has looked at in relation to the role of local Government in health and safety regulation and makes a number of recommendations.

The All-Party Group only considered the role of local government in respect of its obligations as an inspector and enforcer of occupational health and safety regulation and not its responsibilities as an employer or contractor.

Inspection and enforcement activity

The split between who regulates which sector is laid down in regulation and based, broadly, on those sectors deemed “higher risk” being enforced by the HSE and the remainder, such as retail, wholesale distribution and warehousing, hotel and catering premises, offices, and the consumer/leisure industries, by local authorities. The HSE also inspects local authorities and schools. The 380 district and unitary authorities in Britain cover around two thirds of workplaces and half of the workforce.

The idea that the LA-enforced sector is “low risk” has often been disputed. Some LA-enforced sectors like warehousing can have extremely high injury and ill-health rates. Others, even if they have lower levels of injury, are often at higher risk of occupational diseases, such as stress in offices, musculoskeletal disorders in supermarkets or violence in pubs and clubs.

The number of inspections done by local authorities have fallen dramatically since 2010. The number of pro-active inspections fell by 97 per cent between 2010 and 2016, however these have not been replaced by reactive inspections and the overall number of inspections and other interventions fell by 65 per cent.

There are a number of reasons for the fall. One is that the HSE now directs the enforcement activity of local authorities and requires them only to make proactive inspections under very limited circumstances. The 2013 Enforcement Code specifically requires local authorities not to inspect except under certain strict circumstances. Yet even before the code was introduced proactive inspections had fallen by 86 per cent. In part this was due to earlier, 2011 guidance.

The All-Party Group also considered the impact of falling financial resources on enforcement activity. There is no LA specific ring-fenced budget for workplace health and safety enforcement. Since 2010 overall spending by councils on public services has fallen by 22 per cent, however the cuts have not been uniform across all services. The rising cost of social care and the increasing pressure on more visible services such as schools, has meant that services such as health and safety enforcement have often been disproportionately impacted. This can be illustrated by the fall in the number of inspectors employed on health and safety by local authorities. Although the criteria used for determining the number has changed slightly according to returns from local councils, the number of full-time equivalent inspectors has fallen to 543 in 2017 compared to 1,020 in 2010.

The fall in inspections may even be greater than the statistics indicate as, according to an analysis of data collection done by the HSE, local authorities sometimes, incorrectly, register visits for other purposes as being a health and safety inspection if advice on this is given during the inspection, however small. That can include public health or licensing visits.

However, what is less clear is the impact of the fall. Certainly the fall in inspection activity has correlated with a very large decline in enforcement activity. In 2010/11, 6780 enforcement notices were issued by local authorities. In 2016/17 it was 2,420; a 64 per cent decline.

This means far fewer employers are being brought to justice. This does not appear to be because fewer employers are putting their workforce at risk as there has been no fall in injury or ill-health statistics.

Local authorities and health and safety

Throughout this period of reduced inspections and enforcement activity since 2010, the number of people experiencing injury has shown no significant decline and although ill-health statistics for the local government enforced sector are not published, the overall figures for all sectors show that there has actually been an increase in health-related illnesses in the years since 2010. While it cannot be shown that this is a result of the changes to inspection and enforcement, it does show that the fall in inspection activity is not justified on the grounds of a fall in risk.

It has also been argued that risks to health are less likely to be considered by employers than safety issues because of the far lower level of enforcement activity on health risks. Despite occupational diseases being a far bigger cause of ill-health than workplace injuries, they attract less enforcement activity, especially with a reactive enforcement system, as often they do not manifest themselves until years after exposure and are far less likely to be reported to the enforcing authorities.

Role of inspections

The role of inspections is not only to ensure that the law is being complied with but also to assist employers by giving advice and support and promoting good practice. This is particularly the case with pro-active inspections although the present HSE guidance to local authorities states: "There should, however, be a clear distinction between the provision of useful advice directly to a business, and formal inspection."

The all-party group welcomes an evidence-based approach to inspection activity and believes that those premises that are most likely to pose a significant risk to their workforce or the public

should be prioritised. In looking at the areas that local authorities are required to prioritise under the Enforcement Code when determining inspection activities, the priorities are more aimed at injury prevention than tackling occupational health problems, even though health problems are more likely to lead to sickness absence or long-term incapacity.

The All-Party Group heard that, in the past, local authorities sought to keep information on all new businesses setting up in their area and attempted to visit them to explain their legal responsibilities on health and safety and offer advice and guidance. This no longer appeared to take place which means that the opportunity of influencing the business at an early stage was now being lost.

It was noted that the current advice from the HSE to local authorities on prioritising and targeting interventions fails to mention work-related stress and only makes one reference to musculoskeletal disorders (in warehousing), even though they are responsible for two-thirds of sickness absence. This is at odds with the priorities that the HSE has for its own work. It is important therefore that inspection activity is aimed at addressing the actual risk that workers face in the workplace.

While the move away from proactive inspection may have resulted in the fall in certain inspection activity, it does not explain why there has been a large decline in overall inspection activity. The fall in proactive interventions has not been replaced with an increase in targeted inspections. Both have fallen, and the overall decline of two thirds of the total inspection activity is not because there has been a reduction in injuries, which have been more or less stable during that period despite showing a downward trend in the years prior to 2010.

Local authorities and health and safety

Instead it appears likely that, at a time of reduced resources, a combination of reduced money available and competing priorities have led to the decline. The requirements on local councils in respect of food hygiene inspections mean that councils have to make much more frequent visits to food premises rather than other workplaces, despite the relative risk of serious injury or illness from a failure in occupational health and safety being much greater than from a failure in food hygiene. In addition, elected members are far less likely to hear complaints from constituents on occupational health and safety than on food safety, consumer safety, noise and environmental nuisance.

While the all-party group endorses the move towards a more risk-based approach it believes that the current priorities do not reflect the real risk in the workplace. In addition, there is still a role for proactive inspections. There is little deterrent value if the only possibility of an inspection is after an incident has happened. If an employer only believes that they will be inspected if they report an incident, then it makes them less likely to report an injury.

The all-party group also considered consistency of inspection. This was highlighted in the 2011 Lofstedt report into health and safety which recommended 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 was consistent and targeted towards the riskiest workplaces. That resulted in the 2013 Enforcement Code.

Local authorities are required to undertake peer review exercises to moderate their own practice and learn from one another. However, it seems apparent that the code has not achieved consistency. Westminster Council, with 40,052 premises, made the largest number of reactive health and safety visits at 1,397 in 2016/17. The next

largest however, Birmingham, with 22,752 premises, only conducted 39 reactive visits. Birmingham did, however, issue more than twice as many enforcement notices. This inconsistency was noticed throughout all regions of England but was less apparent in Scotland and Wales.

The inconsistency in levels of inspection may also lead to inconsistencies in quality. A number of local councils still have dedicated health and safety enforcement officers, but their number is falling, even though dedicated health and safety enforcement officers will have greater expertise in health and safety enforcement than generic multiple-warranted inspectors who may only make two or three health and safety inspections every year.

The all-party group did consider whether requiring consistency across the local Government sector is appropriate given that local councils should be able to respond to local circumstances and agreed that it would not be helpful. It therefore welcomed that the supporting guidance to the national code does allow some variance. One of the strengths of LA enforcement in the past has been their ability to prioritise local issues that have been raised with them. Examples are a seaside authority to worked with local entertainment venues to reduce noise exposure amongst employees. Another identified specific problems with nail bars and ran a very successful campaign. There are many such examples of how local authorities have successfully responded to local concerns, often in innovative ways that have proved to be models for other councils.

Primary authority scheme

Since 2008, an increasing number of large, multi-site businesses have signed “primary authority” agreements with a local authority (LA) on health and safety enforcement. The scheme enables businesses to form a statutory partnership with a single LA. The two then agree advice and “assured guidance”. This severely limits the ability of other councils to act outside this advice as they must take it into account when carrying out inspections or enforcement. This has been attractive to both the businesses, who only have to deal with one authority, and the local authorities. Measures in the Enterprise Act recently extended the scheme, allowing trade associations to sign these agreements on behalf of their members.

As the guidance from the primary authority has the effective status of regulation, with one local authority producing a uniform understanding of what the regulation means and then, by virtue of the decision of the primary authority, LAs across the UK having to take a common approach. This has been criticised, primarily by the trade unions, who say that the primary authority can have little knowledge of the actual conditions and variations that might exist in other LA area and the ‘top-down’ approach presumes that the employer is able and willing to address issues consistently in all branches without the need for local inspection, but this is not always their experience.

It was suggested that primary authority schemes could be more proactive with regards to national HSE priorities and also to the supply chain and also that the HSE could provide a better framework for consistency of approach.

Fee for intervention

One of the factors that must be considered when considering both funding and consistency is “fee for intervention” (FFI). This is a scheme that has been operated by the HSE since 2012 as a response to the reductions in government funding. If any material breach of the law is found during an inspection, the cost of the original visit as well as the cost of ensuring that the breach is rectified through return visits, reports, getting specialist advice etc, is paid by the employer at a rate of £129 an hour. This does not apply to local authority inspections and local councils cannot make any charges.

An independent review of FFI concluded that “it has proven effective in achieving the overarching policy aim of shifting the cost of health and safety regulation from the public purse to those businesses that break health and safety laws.” The all-party group however is concerned that the fee regime has not been extended to local authority enforcement. This is a major inconsistency and could prove to be an incentive to local councils to improve their levels of enforcement activity.

Trading standards and health and safety

Concerns have been expressed over levels of enforcement over the sale and importation of workplace safety products. While the HSE is the lead enforcer for machinery used in the workplace and also ensuring that personal protective equipment (PPE) used is suitable, trading standards also have a role in monitoring the importation and sale of these. The All-Party Group has previously considered both the failure to restrict the importation of sub-standard PPE and the potential safety risk that this poses. There have also been several reports of a lack of enforcement against some asbestos-containing

Local authorities and health and safety

goods being imported creating health risks, not just to consumers but also postal and delivery workers. It is noted that the British Safety Industry Federation have a primary authority arrangement with Hertfordshire County Council covering issues around safety products.

A 2017 survey by the Chartered Trading Standards Institute found that 67.9 per cent of English authorities did not have the expertise to fully cover the range of statutory duties required of trading standards teams and, in 2018, the National Audit Office said that BEIS saw trading standards as a high-risk area in the medium term and was concerned about reductions going too far.

The All-Party Group wishes to consider, at a later date, potential issues around the role of trading standards in workplace health and safety.

Future role of local authorities

There have been calls for all enforcement activity to be in the hands of one body – the HSE. The All-Party Group rejected that view. It believes that local councils play an important role in enforcement and, through their experience in enforcement in other areas, often have new insights that they can bring to the role. They are also more likely to be responsive to local circumstances.

It is also the case that local councils have a range of inspection responsibilities that are much wider than just health and safety. This means that they can have skills and expertise that are different from the HSE. We therefore do not recommend any major changes to the current responsibilities although some minor amendments may be needed.

The current split in responsibilities does occasionally cause confusion especially in enterprises which may end up having dual enforcement

because they have activities covered by both enforcement bodies. The All-Party Group considers that there is a case for ensuring that no enterprise has more than one regulator. Alternatively, the HSE could look at greater use of flexible warranting to allow HSE and LA inspectors to exercise their powers in each other's premises or spheres of activity. This is permissible under section 19 of the Health and Safety at Work Act and the All-Party Group understands there were some pilots of flexible warrants previously which were quite well received. We believe that flexible warranting in specific industries or sectors where there is a lot of overlap between HSE and local authorities could be a practical way of improving joint work.

There is also a need for greater promotion and publicity of the good work that local authorities are doing, including to the general public.

Recommendations

The All-Party Group recognises the financial restraints that many local councils are working under and the many competing demands on their services. We believe that local authorities, in general, provide a very useful service and that the current dual inspection role between the HSE and local authorities is a pragmatic approach to inspection and enforcement.

We recommend that:

- The HSE ensure that local government priorities on inspection reflect the current HSE strategy with greater emphasis on health, rather than just safety.
- Consideration should be given to ensuring that all new premises or enterprises covered by local authority enforcement activities should receive a proactive visit at the earliest opportunity.

Local authorities and health and safety

- The HSE should provide some framework for consistency of approach in good primary authorities working and ensure greater scrutiny of the scheme.
- That “fee for intervention” should be extended to local authorities.
- Information on the health and safety inspection and enforcement performance of individual authorities should be more easily available, including historical comparisons.
- The HSE Local Authority Unit should consider whether they can improve intelligence on effective local authority enforcement activity and do more to share examples of good practice amongst local councils and publicise the work they do.
- The HSE should look at ensuring that workplaces do not have duplicate LA and HSE health and safety enforcement in different parts of their operation by either amending the enforcement regulations or making greater use of flexible warranting.

Sources

Figures on rates of injury and illness are from the annual statistics prepared by the HSE. Figures on inspection activity, including numbers of inspections, are from the annual LAE1 returns that local authorities make or analysis of these figures by the Local Authority Unit.

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