

Health and safety in the workplace

[Law](#), [Security](#)



In Scotland, an inspector never brings a prosecution himself as happens in England. In Scotland, the inspector would collect the evidence and pass it to the Procurator Fiscal, who, after consulting the Crown Office, would decide whether to bring criminal proceedings. Apart from breach of the general duties, there are numerous other offences specified by the Act. For example, contravening any of the regulations made under the Act or obstructing an inspector.

The maximum penalty for breaches of ss 2-6 of the HSAW Act, and for breaches of enforcement notices, under summary procedure, has increased to 20000, and the sheriff can also impose a prison sentence of up to six months for breaches of enforcement notices. If a person is found guilty of an offence by a sheriff under solemn procedure, he could be fined an unlimited amount and/ or imprisoned for up to three years Improvement notice

If an inspector is of an opinion that a person (a) is contravening a relevant statutory provision, 2 or (b) has contravened one or more provisions in circumstances that make it likely that the contravention will continue or be repeated, then the inspector may serve an improvement notice stating that he is of that opinion, the relevant provisions which he thinks has been contravened, why he is of that opinion, and requiring that person to remedy the matter within a certain stated period (the period must not be less than 21 days).

An appeal to an industrial tribunal can be made against such a notice within 21 days). The lodging of an appeal will suspend the notice until the appeal is heard. In February 1996 the HSC issued an enforcement policy statement

that businesses have a right of representation before the formal issuing of an improvement notice. Before an improvement notice can be issued the business has a right to request a written explanation of the contravention, an outline of what needs to be done and a time scale for the work.

The business has a two-week period from receiving the written notice during which it can make representations to change or cancel the notice. The proposed notice will then be reconsidered with regard to the representations. If no representations are received then the improvement notice will be issued. Prohibition notice If an inspector is of the opinion that an activity involves a risk of serious injury, then he may serve a prohibition notice.

This notice will state (a) that this is his opinion; (b) the matter which is giving rise to this risk of injury; (c) which statutory provision is being contravened; and will order (d) that certain activities should not be carried out until the matters specified in the notice have been remedied. The notice can take immediate effect or it can be a deferred prohibition notice, taking effect at the end of a period specified in the notice. An appeal against a prohibition notice can be lodged within 21 days.

Such an appeal does not automatically suspend the notice. The employer has to apply for this suspension and, if he fails, the notice will have effect, either immediately or within the period stated. Since this could seriously affect the employer's business, appeals are normally heard very quickly.

There is no right to make representations before the issuing of a prohibition notice. In *Associated dairies v Hartley* 1979 the appellants, who used roller trucks, provided safety footwear for employees at cost price.

One day, an employee's foot was injured. An inspector issued an improvement notice requiring the employers to provide suitable footwear free of charge. There was statutory requirement to do this-and remember that an obligation under s 2 for providing for the safety of employees is qualified-so far as is reasonably practicable. In deciding whether the inspector's requirement was reasonably practicable, the tribunal had to balance the trouble, time and expense of providing free boots against the likelihood of such an accident happening again.

In this case, it was shown that the likelihood of such an accident happening again was remote. The tribunal allowed the appeal. They felt that the employer's arrangement of providing boots at cost price was satisfactory. The health and safety (enforcing authority) regulations 1977. These regulations, amended in 1989, stated that certain premises were to be the responsibility of the HSE and some of the responsibility of the local authorities (that is the local council through the Environmental Health Officers (EHO)).

EHO's have the same powers as HSE inspectors. However, the enforcement in a particular case can be transferred from one body to the other with the permission of the HSC. Most offices, shops, restaurants, warehouses and hotels are assigned to the local authorities, while most industrial business premises are the responsibility of the HSE inspectors who also inspect all premises occupied or controlled by the local authority and the crown.