

Title of meeting:	Cabinet Member for Environment and Community Safety Decision Meeting
Date of meeting:	11 November 2015
Subject:	Health & Safety Service Plan 2015 / 2016
Report by:	Director of Regulatory Services, Community Safety and Troubled Families
Wards affected:	All
Key decision:	No

1. Purpose of report

- 1.1. This report is an expression of the Council's commitment to its health and safety role and responsibilities to develop a Health and Safety Delivery Team. It sets out the manner in which health & safety inspections, initiatives and activities have been designed to meet the requirements of the National Local Authority Enforcement Code, issued by the Health and Safety Executive (HSE), under Section 18 of the Health and Safety at Work etc. Act 1974 (HSW Act).
- 1.2. The HSE require a Health and Safety Intervention Plan to be submitted annually for Member approval to ensure local transparency and accountability.
- 1.3. As in 2014/2015, this year's plan is based upon the following key priorities:
 - Controlling real risks – those which arise most often and those with the serious consequences;
 - Ensuring that those who create risks manage them responsibly and understand that failure to manage real risks responsibly will lead to robust action.
- 1.4. Upon approval, the plan will be effective for a period of 1 year.

2. Recommendation

- 2.1. **That the Cabinet Member for Environment & Community Safety approves the manner in which Environmental Health proposes to deliver its Health and Safety responsibilities in 2015 / 2016.**

3. Statement of purpose

- 3.1. By ensuring that health and safety regulation is sensible and proportionate and by acknowledging the Government's robust approaches to tackle damaging compensation cultures, Environmental Health aims to support economic growth by helping business to flourish whilst maintaining a healthy, productive workforce.

4. Statutory function

- 4.1. Environmental Health will devote sufficient resource to health and safety enforcement to comply with its duties under section 18 (4) of the HSW Act.
- 4.2 The HSE have the powers to take a view on our enforcement performance using the information supplied by us and by reviewing inter-authority audits carried out using the Health and Safety Executive / Local Authority Enforcement Liaison Committee (HELA) protocol.
- 4.3 Should we fail to meet our legal obligation under Section 18 of the HSW Act, the Secretary of State may, after considering a report submitted by the HSE, cause a local enquiry to be held. If the Secretary of State is satisfied by such an enquiry that a local authority has failed to perform any of its enforcement function, he may make an order declaring the Authority to be in default. The order may direct us to perform our enforcement functions in a specified manner within a specified period of time.
- 4.4 Should any defaulting local authority fail to comply with such an order, under Section 45 of the HSW Act, the Secretary of State may enforce the order, or make an order transferring the enforcement functions of the defaulting local authority to the HSE, in which case the HSE's expenses are paid by the defaulting authority.
- 4.5 The following elements are essential to adequately discharge our duty as an Enforcing Authority:
 - A clear published statement of enforcement policy and practice;
 - A system for prioritised planned inspection activity according to hazard and risk, and consistent with any advice given by the HSE and HELA;
 - A Service Plan detailing the LA's priorities and its aims and objectives for the enforcement of health and safety;
 - The capacity to investigate workplace accidents and to respond to complaints by employees and others against allegations of health and safety failures;
 - Arrangements for benchmarking performance with peer local authorities;
 - Provision of trained and competent regulators; and
 - Arrangements for liaison and co-operation in respect of the Primary Authority Partnership Schemes.

5 Background

- 5.1 Recent years' activities have been determined by the reducing service budget, the local public health agenda and the 'better regulation' agenda. As part of the council's efficiency drive to make savings this year the Environmental Health H&S team will go through further subtle changes directing more and more resource away from these responsibilities onto functions of higher profile, risk and demand.

- 5.2 Deregulation impacted on health and safety following Lord Young's review of health and safety, Common Sense - Common Safety, the Löfstedt review recommending reducing the burden of unnecessary regulation on businesses and the HSE's National Local Authority Enforcement Code which provided a principle based framework that recognised the respective roles of business and the regulator in the management of risk. The resulting reduced demand reflects the decreased level of full time employee equivalent provided for health and safety responsibilities and the redirection of staff to deliver other service priorities within Environmental Health, particularly those surrounding support and advice to food business operators.
- 5.3 Whilst the primary responsibility for managing health and safety risks lies with the business that creates the risk, Environmental Health retain an important role in ensuring the effective and proportionate management of risks, supporting business, protecting communities and contributing to a wider public health agenda.
- 5.4 To fulfil these obligations it is vital that the city council's regulatory resource in terms of health and safety is maintained and used consistently to the best effect by targeting specific risks or focussing on specific outcomes.
- 5.5 To do this, in 2015 / 2016 Environmental Health will continue to use the full range of regulatory interventions available to influence behaviours and the management of risk. Proactive inspections will, however, only be utilised only for premises with higher risks or where intelligence suggests that risks are not being effectively managed. Explicitly therefore our Intervention Plan excludes proactive inspections which have historically characterised health and safety regulation.

6. Service delivery - Intervention Plan

- 6.1 As in 2014 / 2015, whilst managing demand with fewer resources, Environmental Health will only:
- Proactively inspect high risk activities in those sectors specified by HSE and where intelligence suggests risks are not being effectively managed;
 - Assess RIDDOR accident notifications;
 - Investigate complaints about poor working practices or working conditions.
- 6.2 Unequivocally, inspections are not considered to be an effective use of public or business resources which are managing their risks effectively. Risk ratings will not be used for determining the use of a particular intervention or to decide an intervention frequency. Rating or re-rating of premises will be a desktop risk assessment, which will use all available information about a site, compare it with the HSE National Code objectives and local priorities to determine what intervention, if any, is appropriate.
- 6.3 Consequently, reactive interventions will further develop as the primary Health and Safety service delivery function. To further support this strategy, businesses have the right to refer to the Independent Regulatory Challenge

Panel (IRCP) if they are subject to a proactive inspection when they consider themselves to be operating in a lower-risk sector and have been unreasonably targeted. Environmental Health therefore needs to be prepared to explain to a business why, if used, proactive inspection was considered to be the best intervention.

7 Categorisation of Regulated Sites

- 7.1 Regulated sites are divided into risk categories. The risk based upon an assessment of the performance of management on the site to secure health and safety, rather than the inherent site hazards. The risk rating alone will be used to determine the use of a particular intervention or to decide an intervention frequency.
- 7.2 Four categories (A – high risk; B1 and B2 - medium risk and C – low risk) based on a business's health and safety performance are available. These will assist us to assess and score premises and determine intervention priorities. The rating process evaluates and gives a value to four different elements of a business's health and safety performance: confidence in management, safety performance, health performance, welfare compliance gap.

8 Reactive Interventions

8.1 Accident Investigations

8.1.1 Environmental Health will investigate accidents notified under the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) which meet the selection criteria. In deciding which accidents to investigate regard shall be had to the severity and scale of actual harm, the seriousness of any potential breach of the law and previous history of the duty holder.

8.1.2 Generally, the following categories of accident will be investigated:

- All fatalities arising out of work activities;
- Certain incidents reportable under RIDDOR namely – defined major injuries, diseases and dangerous occurrences related to the severity of the outcome;
- All RIDDOR incidents where there is likely to have been a serious breach of health and safety law.

8.2 Complaints about Health and Safety Failings

8.2.1 Environmental Health will deal with issues of concern and complaint relating to health and safety practices/conditions and to advise all complainants of the outcome.

8.2.2 Complaints fall into three broad categories:

- Complaints about unsafe working conditions or practices;

- Complaints about welfare related issues i.e. working hours, breaks, temperature;
- Complaints about lack of suitable training, supervision or instruction of employees.

9 Reporting performance

- 9.1 As required, Environmental Health monitor, capture and share health and safety intervention, enforcement and prosecution activity. This information is shared with HSE via a statutory return to allow the preparation of national data.
- 9.2 Data, in relation to the HSE return for the last two years is provided below in Table 1.

Table 1

Intervention		2013 / 2014	2014 / 2015
Proactive inspections		0	0
Non-inspection interventions	Visits	4	4
	RIDDORS processed	161	153
Reactive visits	Visits in relation to incidents	1	10
	Visits in relation to complaints	14	8
	Visits following requests from businesses	0	0
Revisit following earlier intervention		1	12

10. Enforcement Policy

- 10.1 The Compliance Code, replacing the Regulators' Compliance Code was published in July 2013. Officers within the Health and Safety Team take into account the principles of good enforcement set out in the Code. The Council's general enforcement policies are compliant with the Compliance Code.

11. Enforcement Action 2014 / 2015

- 11.1 Compliance with health and safety law remains consistent. Warning letters requiring improvement works have been sent to a number of businesses. There have been six formal improvement notices served and one simple caution was issued in relation to an asbestos related offence. No prosecutions were taken.

12. The necessity to adopt the 2015 / 2016 plan

- 12.1. To ensure that there is an agreed, transparent programme of health and safety inspection and investigation for the city of Portsmouth for the forthcoming year.
- 12.2. To demonstrate that the local authority is complying with its statutory duties, following national guidance and is supporting businesses in an effort to reduce the incidence of accidents.

13. Equality Impact Assessment

13.1. The intervention and inspection criteria have previously been subject to a provisional equality impact assessment. There are unlikely to be any equality impacts as a result of this proposal as it will not result in a change to the level of service currently provided.

14. Legal Implications

14.1. Legal Services have confirmed that it is within the Cabinet Member's powers to approve adoption of the Health & Safety Intervention Plan 2015 / 2016 as contained within this report.

15. Director of Finance's comments

15.1. The activities proposed within the Health and Safety Intervention Plan 2015 / 2016 and summarised in this report, will be funded from the existing portfolio budget, as approved by Full Council.

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Signed by: Rachael Dalby - Director of Regulatory Services, Community Safety and Troubled Families

Appendices: None

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document and location of document
Nil

The recommendation set out in 2.1 above was approved/ approved as amended/ deferred/ rejected by the Cabinet Member for Environment and Community Safety on 2nd October 2015.

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Signed by: Councillor Robert New, Cabinet Member for Environment and Community Safety