

HSE Inspector Visit Procedure

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NHS Shetland Document Development Coversheet*

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***To be attached to the document under development/review and presented to the relevant group**

Please record details of any changes made to the document in the table below

Date	Record of changes made to document
March 2022	Introduction of new procedure

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1. Introduction

This procedure deals with visits from the Health and Safety Executive (HSE) Inspector.

The Health and Safety at Work etc., Act 1974 Sections 19-28 provide the required authority to allow an inspector to ensure the enforcement of Health and Safety Legislation.

2. Purpose

The purpose of this procedure is to ensure systems are put in place to support the commitment made by NHS Shetland with regards to visits from an HSE Inspector.

3. Scope

This procedure applies to all areas within NHS Shetland.

4. Definition of Terms

HSE: Health & Safety Executive

5. Roles and Responsibilities

5.1. Chief Executive

The Chief Executive remains responsible for Health and Safety. In addition to the responsibilities laid down in the Management procedure, there are further specific duties inherent within this procedure. These are detailed below.

5.2. Executive Directors

Executive Directors shall:

- Ensure Heads of Departments, Senior Managers and Clinical Leads comply with the responsibilities set out within this procedure and co-operate fully with any HSE inspector in relation to accident investigation, fact finding or safety inspections.

5.3. Heads of Service, Senior Managers and Clinical Leads shall

- Ensure Line Managers comply with the responsibilities set out within this procedure;
- Ensure that resources (financial and personnel) are efficiently utilised to implement further control measures; and
- Where the above point is not immediately practicable, escalate the request to the relevant Executive Director.

5.4. Line/Ward/Departmental Managers shall:

- Ensure all staff are aware of this procedure;
- Co-operate fully with any HSE Inspector; and
- Ensure requirements are adhered to.

5.5. Employees have duties in their own right; these include but are not limited to:

- Take reasonable care of themselves and others who may be affected by their acts or omissions;
- Co-operate fully with any HSE Inspector;
- Co-operate fully with NHS Shetland by following rules and Safe Working Procedures designed to ensure their safety at work;
- Report any dangers or defects they identify or any concerns they might have in relation to their working environment; and
- Report all adverse events on the organisation's adverse event reporting system.

6. Procedures

6.1. Who enforces Health and Safety Law?

Health and safety legislation is enforced by two government bodies, the Health and Safety Executive (HSE) and Local Authority Environmental Health Departments.

HSE Inspectors enforce Health and Safety legislation within factories, construction sites, mines, quarries, railways, offshore installations, hospitals, NHS premises etc.

Local Authority Environmental Officers look after offices, retail, warehousing, leisure, and hospitality and consumer services.

Inspectors have the right to enter any workplace without giving notice, though notice may be given where the inspector thinks it appropriate. On a normal inspection visit an inspector would expect to look at the workplace, the work activities, the management of health and safety, and to check compliance with health and safety law.

The fundamental role of an inspector is as follows:

- To enforce legislation relating to health, safety and welfare;
- To monitor the safety performance and accident potential in places of employment;
- To provide general advice to employers and employees on practical aspects of health, safety and welfare and interpret the legislation which they enforce, and to liaise with Trade Union Safety Representatives;
- To investigate accidents and dangerous occurrences;
- To gather and collate statistics relating to accidents and occupational diseases, and transmit this information to the Health and Safety Executive and Commission for analysis and publication;
- To monitor the standards of new machinery, processes and substances, and liaise with manufacturers; and
- To promote safety training activities relating to health, safety and welfare of people at work.

6.2. Enforcement powers of Health and Safety Inspectors

The Enforcing Authorities appoint inspectors with wide-ranging powers. Every inspector is issued with a warrant of appointment, which specifies, usually by reference to the appropriate Sections of the Health and Safety at Work etc., Act 1974, what powers they have been given. Whenever an inspector uses or seeks to use any of their powers, they must produce their warrant, if asked to do so.

In essence an inspector's powers are as follows:

- The right of entry – an inspector may enter any premises which he/she considers to be a place of employment at any reasonable time of day or night if he/she thinks there is a “dangerous” situation;
- To be accompanied by a Police Constable if there is reasonable cause to suspect that there would be any serious obstruction to prevent his/her duties from being carried out;
- To be accompanied by any other person who has been authorised by their Enforcing Authority, such as a specialist and any equipment that may be required;
- To request that premises, parts of premises or anything in the premises to be left undisturbed until an examination or investigation is completed;
- To take measurements, samples, photographs and make sound recordings as he thinks fit;
- To order equipment, plant, substances etc., to be dismantled or destroyed if there is reasonable cause to believe it may present an immediate danger or serious personal injury in the circumstances in which they find it;
- To take into the possession of the Health and Safety Executive articles or substances which he/she deems necessary for completion of the investigation;
- To require the production of, and take copies of, books and documents which are relevant to the inspection or investigation;
- To interview any person and take written statements from any person he/she believes may give information relevant to the examination or investigation and require them to sign a declaration that the answers given are true;
- To request the use of facilities to enable an investigation to be carried out (e.g. an inspector may require access to an office, with desk and telephone, from which to work undisturbed);
- To request assistance from any persons whom he/she believes can provide that assistance; and
- To use any other powers which he/she requires in order to carry out his/her duties.

6.3. Enforcing Health and Safety Law

Inspectors may take enforcement action on finding a breach of health and safety law. The action will depend on the nature of the breach.

A Fee for Intervention cost recovery scheme came into effect on 1 October 2012 and applies where HSE is the enforcing authority.

The Health and Safety (Fees) Regulations 2012 put a duty on HSE to recover its costs from duty holders who are found to be in material breach of health and safety law. A material breach is where the law has been broken and the inspector judges the breach to be serious enough for them to notify the duty holder in writing. This will either be a notification of contravention, an Improvement or Prohibition Notice, or a prosecution.

Methods of enforcement action may be:

Informal:

Where the breach of the law is relatively minor, the inspector may instruct the duty holder what to do to comply with the law, and explain why. The inspector will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice.

Improvement notice:

Where the breach of law is more serious, the inspector may issue an Improvement Notice to instruct the duty holder to do something to comply with the law. The inspector will discuss the Improvement Notice and, if possible, resolve points of difference before serving it. The Notice will say what needs to be done, why and by when. The time period to take remedial action will be at least 21 days, to allow the duty holder time to appeal to an Industrial Tribunal, if they so wish. The duty holder will be told, in writing, about the right of appeal to an Industrial Tribunal. The inspector can take further legal action if the Notice is not complied with within the specified time period.

Prohibition notice:

Where an activity involves, or will involve, a risk of serious personal injury, the inspector may serve a Prohibition Notice prohibiting the activity immediately or after a specified time period, and not allowing it to be resumed until remedial action has been taken. The Notice will explain why the action is necessary. The duty holder will be told, in writing, about the right of appeal to an Industrial Tribunal.

Prosecution

In some cases, the inspector may consider that it is also necessary to initiate a prosecution. Health and safety law gives courts considerable scope for punishing offenders and deterring others. Unlimited fines and in some cases imprisonment may be imposed by higher courts.

6.4. Reception of a HSE Inspector

In the event of any HSE visit, the person receiving the inspector must contact the Director of Human Resources and Support Services immediately. Should the visit be out-with normal working hours the Duty On-Call Manager is to be contacted.

Inspectors must be treated in a professional manner and should be afforded any reasonable assistance in the course of their duties.

It must be stressed that the inspector has the right to free access of the whole of the operation, to inspect and take copies of any records or documents which are legally required to be kept, take samples, take photographs and make recordings.

The inspector also has the right to be given access to a room, with desk, where he/she can conduct interviews, write notes, make telephone calls etc.

An inspector may wish to interview a member of staff, and may do so using the powers given under The Health and Safety at Work etc., Act 1974 Section 20. Under this legal framework in Scotland, the inspector will not provide a copy of the given statement to the employee or employer.

Any information provided to HSE Inspectors must be accurate and questions answered truthfully. Should the answer to a question be unknown, then this should be made clear to the inspector and no attempt is to be made to provide information that is merely a personal view that is not evidence based.

When a statement is being taken the person being interviewed may nominate another person to be present. This is normally a Union representative or a colleague and, permission is at the discretion of the inspector. The employer cannot insist that a specific person, for example a manager or a lawyer, is present. It is an offence to prevent or attempt to prevent a person from appearing before an inspector or to prevent or attempt to prevent a person answering questions. Additionally, persons can be excluded from interviews.

If an individual is believed to have committed an offence, the inspector may take a statement under common law caution. The inspector will inform any other law enforcing agencies if necessary.

7. Information, Instruction and Training

There is no formal training provided for an HSE Inspector visit.

8. Measuring Performance

It is essential that the contents of this procedure are monitored and accurately evaluated in order to ensure its continued effectiveness. This will be done by the Health & Safety Lead under normal NHS Shetland policy and procedure review processes every 3 years, unless significant procedure or amendments to legislation take place that necessitate a premature review. Reviews are overseen by the Health, Safety & Wellbeing Committee under normal NHS Shetland Governance arrangements.

9. Record Keeping

Following a visit from an HSE Inspector, any written information or correspondence from the HSE should be retained within the department. A copy must also be made and provided to the Director of Human Resources and Support Services.

10. Document Statement

This is a Procedure in support of the Health and Safety Policy.

11. Related Documents

There are no additional organisational documents in relation to this procedure.

12. References and Bibliography

- The Health and Safety and Safety at Work etc., Act 1974
- “What to expect when a Health and Safety Inspector calls” HSC14

13. Appendices

There are no appendices relating to this procedure.