



...more than a law firm

An inspector calls... what you should know

A Health and Safety Briefing



Why should you be concerned?



There are numerous bodies who are tasked with enforcing health and safety legislation. In summary, the Health and Safety Executive (HSE) concern themselves with factories, agriculture, mines and quarries, docks and railways to name just four. Local Authorities oversee, amongst others, shops, offices, schools and colleges, and hospitals. A Local Authority Inspector can only exercise his powers within the geographical limit of the Local Authority which employs him.

Each enforcing authority appoints suitably qualified individuals to be Health and Safety Inspectors. Each appointment must be in writing and must specify the powers that the inspector can exercise. You have the right to ask the inspector to produce evidence of his appointment.

These, therefore, are the individuals who both exercise the statutory powers summarised here and who enforce the criminal liability which is envisaged by health and safety legislation. Never

underestimate the situation when an inspector visits. A Senior HSE Inspector once said to me that the second he walked into a workplace he “put on his enforcement hat”. He could not have made a clearer statement of intent and given the considerable array of powers which he enjoyed it is not surprising.

It is the case that those organisations which have sound and compliant health and safety practices are likely to be much better positioned to deal with the

inspector in the exercise of his powers. Nevertheless as the potential for fallout from the exercise of the inspector’s powers can be huge, whether in resources or time, even these organisations should have a good working knowledge of the powers at the disposal of an inspector. This is particularly important if the visit has been prompted by an accident. This document aims to arm you with this knowledge.

Powers of a Health and Safety Inspector

The powers available to an inspector are set out in Section 20 of the Health and Safety at Work Etc. Act 1974 (HSWA). As one Court has observed the section is “obviously intended to contain wide powers”. In summary they are –

Power to Enter Premises: HSWA 1974 s20(2)(a)

“At any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in sub section (1) above”

This is the inspector’s general power to come onto your premises in order to secure compliance with health and safety legislation. He must be exercising his general health and safety powers,

and should be in a position to show a reason which would support his subjective belief that it is necessary to enter premises. In reality this is a wide ranging power which permits the inspector to visit at any reasonable time or at any time where a dangerous situation exists. The inspector does not need to give you notice of his visit and many visits are unannounced!

Power to Examine and Investigate: HSWA 1974 s20(2)(d)

“To make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in subsection (1) above”

This permits the inspector to make such examination and investigation as he feels is appropriate. The exercise of this power is not necessarily limited to the premises in question.

As the words “examination” and “investigation” are not defined it is

difficult to know what limits there are on this power and it should be regarded as giving the inspector a wide discretion.

Power to Ensure things are left undisturbed: HSWA 1974 s20(2)(e)
“As regards any premises which he has power to enter, to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (d) above”

It is often the case after an accident that a “no go area” is imposed by the inspector or a stipulation that an item of equipment has to be left untouched. This section is designed to allow the inspector to consider the evidence and possibly to bring in another inspector with specific expertise. The inspector will serve a written notice indicating the duration of the restriction.

Measurements, Photographs and Records: HSWA 1974 s20(2)(f)

“To take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d) above”

This is a self-explanatory and again wide ranging power and it should be noted it is not necessarily related to or limited to the premises in question.

Articles and Substances: HSWA 1974 s20(2)(g)

“To take samples of any articles or substances found in any premises which he has power to enter, and of the atmosphere in or in the vicinity of any such premises”

As the word “articles” is not defined the likely inference is that this power permits an inspector to consider equipment as well as any substance, but that he can only take away the sample and not the article or substance. The power is intended to cover atmospheric testing. Substance includes any solid or liquid or anything in the form of a gas or vapour. The inspector must show a clear link to the premises which he has entered. No set procedures are specified and you should demand clear information as to what power is being used.

Power to Dismantle or Subject to Testing: HSWA 1974 s20(2)(h)

“In the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in sub-section (1) above)”

By virtue of this power the inspector can carry out relevant tests. The additional stipulation is that if such power is exercised on premises then the person in control of those premises has the right to require any such testing to be carried out in his presence. This does not mean that you can demand the inspector waits for you to come back from another location!

Take Possession of and Detain Dangerous Articles or Substances: HSWA 1974 s20(2)(i)

“In the case of any such article or substance as is mentioned in the preceding paragraph, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –

- (i) to examine it and do to it anything which he has power to do under that paragraph;
- (ii) to ensure that it is not tampered with before his examination of it is completed;
- (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions...”

This power allows the inspector to remove and retain any article or substance so that appropriate examination can be carried out or with a view to ensuring it is not tampered with so as to retain its authenticity as evidence for use in any subsequent proceedings.

The inspector is required to leave with a responsible person a notice detailing the article or substance and the power he has exercised. He should also provide a similar sample marked as such.

Power to Require Answers: HSWA 1974 s20(2)(j)

“To require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) above to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers”

This wide ranging power exceeds any power which, for example, the police have. It should be distinguished from the situation where an individual gives a voluntary statement to the inspector. Here the inspector has the right to ask questions of individuals about whom there is a reasonably held belief that

they can provide relevant information and to compel the individual to answer.

That individual is entitled to be accompanied by someone else. He is required to sign a declaration that the answers given are true. It is an offence to supply untrue information or to fail to answer at all. However, any answers given to the inspector using this power are not then admissible in subsequent legal proceedings against the individual concerned.

The inspector can ask questions in writing as well as conduct a face to face meeting. It should be recognised that any answers can still be used in evidence against another individual or an employer.

Power to Require Production, Inspection and Take Copies: HSWA 1974 s20(2)(k)

“To require the production of, inspect, and take copies of or of any entry in –

- (i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept; and
- (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d) above”

Using this power the inspector can require production of documents. The power does not extend to removing originals but merely taking copies unless copying facilities are unavailable whereupon the inspector can take the originals and return them once inspected and copied. Any documents released and copied in this way should be marked as such by you.

The inspector can specify in quite general terms the type of document he is seeking. This can place an onerous burden on you to search and produce relevant copies of documents which meet the inspector’s criteria. Only documents which are protected by legal privilege are exempt from this requirement.

In broad terms these are documents which are prepared during a solicitor/client relationship or with the predominant purpose of dealing with forthcoming litigation.

Power to Require Facilities:
HSWA 1974 s20(2)(l)

“To require any person to afford him such facilities and assistance with respect to any matters or things within that person’s control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section”

This in essence is a general requirement to be helpful and unobstructive. This does not, however, mean that you should shy away from taking any relevant professional advice as to how to react to an inspector’s requests, or considering critically all requests made of you.

Any other power which is necessary:
HSWA 1974 s20(2)(m)

“Any other power which is necessary for the purpose mentioned in sub section (1) above”

This is a very important “sweeping up power” as one Judge has accurately categorised it. Its practical relevance, in particular in an age of computer information and data, is that the inspector may well call for production of information that is kept electronically but nowhere else.

Power to Deal with cause of Imminent Danger: HSWA 1974 s25(1)

“Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance

is a cause of imminent danger of serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise)”

A power which permits the inspector to deal with causes of imminent danger. There are additional procedural requirements which apply whereby the inspector should, if practicable, take a sample of any offending substance and provide a portion of that sample to the person responsible for the premises.

Improvement Notices: HSWA 1974 s21

If, after using any of his statutory powers and carrying out an investigation, an inspector feels further action is required (implicitly believing informal action is inappropriate) he can serve an Improvement Notice where there is a suspected, possibly continuing, breach of health and safety legislation. The notice should specify what breaches are alleged to be occurring, and include reasons for the opinion and require the person to remedy the contravention within a set period of time. Where you object to the terms of the notice you have a right of appeal within 21 days. The terms of the notice are suspended until the appeal is disposed of.

Prohibition Notices: HSWA 1974 s22

Here the inspector can bring activities to a halt where he feels that they involve a risk of serious injury by serving a prohibition notice. Again there are procedural requirements whereby the inspector needs to specify his opinion

and the matters which give rise to a risk of injury. Ultimately the notice directs that the relevant activities shall not be carried out unless the matters specified in the notice are remedied. A Prohibition Notice can take effect immediately or at the end of a period specified in the notice. Again there is a right to appeal within 21 days of service of the notice.

But beware...

HSE Inspectors, however, do not have a general power of search nor can they obtain a Search Warrant. The police, however, could obtain a Warrant if they are involved in the investigation. It is important not to unwittingly release information and/or documents. In cases where documents are seized unlawfully it may be appropriate to make an immediate application for an injunction.

Help yourself

It can easily be seen that the inspector has a considerable array of powers. It is an offence to obstruct an inspector in the exercise of his powers and also to contravene an Improvement or Prohibition Notice.

An unlimited fine or two years imprisonment can result from more serious offences. So clearly you should tread carefully. But you can help yourself. An awareness of an inspector’s powers will help you deal with an investigation visit. Forewarned is most definitely forearmed!

Information

If you require any further information about any of the issues raised in this fact sheet or on regulatory matters in general please contact Chris Platts on 01482 323239 or email chris.platts@rollits.com.

This fact sheet is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this useful. If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

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February 2008.

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