

Health and Safety

Operating Plan 2019 - 2022

Regulatory Services

Published 28th January 2020

Portsmouth City Council

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1. Introduction

- 1.1 This operating plan has been developed to outline the key proposed work streams of Portsmouth City Council's (the Council) Regulatory Services (RS) with regard to Health and Safety for the period of 1 April 2019 to 31 March 2022.
- 1.2 Regulatory Services reports to the Director of Culture, Leisure and Regulatory Services and the responsible Cabinet Member for Community Safety.
- 1.3 The Service is currently staffed by four Environmental Health officers (1 x 0.2 and 3 x 0.1 FTE) and 1 x Environmental Health Practitioner (1 x 0.1 FTE).
Total: 0.6 FTE

2. Overall Aim of the Service:

“To work with others to protect people's health and safety by ensuring risks in the changing workplace are managed properly.”

3. Foreword

- 3.1 The RS team together with colleagues, from all the services provided by local authorities, clearly recognises that the current challenges faced by the public sector are very demanding and challenging.
- 3.2 Our common and primary purpose in meeting all our planned objectives is to benefit the City of Portsmouth. This primarily involves providing long term benefits to the businesses and consumers for which RS is empowered by a wide range of statutory legislation.
- 3.3 RS will continue to adapt any strategies and related policies it implements around various key documents as developed by Central Government. These policy documents include:
 - *Decentralisation and the Localism Bill: an essential guide*
 - *Open Public Services White Paper*
- 3.4 The Business Support team will continue to adapt any strategies and related policies it implements around key documents as developed by national bodies and organisations. These policy documents include:
 - *Priority Regulatory Outcomes: A New Approach to Refreshing the National Enforcement Priorities for Local Authority Regulatory Services*

- *No Stone Unturned. In Pursuit of Growth*
- *Open for Business: A Shared Vision for Regulation*
- *Reclaiming health and safety for all: An independent review of health and safety legislation*
- *Regulators Code*
- *Helping Great Britain Work Well*
- *Health and Safety Executive Business Service Plan 2019-2020*
- *Cutting Red Tape*

3.5 RS will continue to further adapt any strategies and related policies it implements around various key documents as developed by the Council. These policy documents include:

- *The Portsmouth Plan*
- *Regeneration Strategy - Shaping Portsmouth*

3.6 Additionally, RS remains committed to adapt its role accordingly to new developments and respond appropriately to these new challenges, as and when they may arise and from whichever direction they may come from.

4. Statutory functions

4.1 Section 18 of the Health and Safety at Work etc. Act 1974 (HSW Act) (17) places a duty on the Health and Safety Executive (HSE) and the Council to make adequate arrangements for Health and Safety Enforcement.

4.2 In his report "*Reclaiming health & safety for all: An independent review of health and safety legislation*" Professor Ragnar Löfstedt recommended that HSE be given a stronger role in directing local authority (LA) health and safety inspection and enforcement activity.

4.3 The Health and Safety strategy, "*Helping Great Britain Work Well*" was published on 29 February 2016. This sets out 6 strategic themes for the whole of the national health and safety system. LA workplace health and safety regulators are a key part of that system, to play their role in:

- Encouraging and recognising improvements, being increasingly joined up to deliver improved outcomes and minimise unnecessary burdens on businesses
- Continuing to promote the risk-based, goal-setting regulatory regime that has served health and safety in Great Britain so well.
- Working with partners in the system to make workplaces safer and healthier, providing a level playing field for responsible employers with regulators and co-

- regulators, by advising, promoting, and where necessary, enforcing good standards of risk control.
- Using proportionate, risk-based regulation to support better outcomes, innovation and the safe use of new technologies.
 - Developing services and products that contribute to improved management and control of risks, sharing our knowledge, and
 - Continue a dialogue and conversation with stakeholders to make the system better, always looking to provide simple, pragmatic advice and support.
- 4.4 The National LA Enforcement Code (the Code) has been developed as an outcome of the Red Tape Challenge on Health and Safety. It is designed to ensure that local authority health and safety regulators take a more consistent and proportionate approach to enforcement.
- 4.5 Whilst the primary responsibility for managing health and safety risks lies with the business who creates the risk, local authority health and safety regulators have an important role in ensuring the effective and proportionate management of risks, supporting business, protecting their communities and contributing to a wider public health agenda.
- 4.6 LA regulators are competent professionals granted powers and duties to deliver proportionate and targeted enforcement. RS takes the view that remains vital that regulatory resource is used consistently and to best effect by targeting specific risks or focussing on specific outcomes. The service will continue to use the full range of regulatory interventions available to influence behaviours and the management of risk with proactive inspection utilised only for premises with higher risks or where intelligence suggests that risks are not being effectively managed.
- 4.7 Notified accidents and complaints will be dealt with according to the incident selection criteria issued by HSE and LA Code number 22/13 (rev 1). The Code provides direction to all local authorities on meeting these requirements, and reporting on compliance.
- 4.8 The Code is given legal effect as HSE guidance to local authorities under Section 18(4) (b) of the Health and Safety at Work etc. Act 1974 (HSWA) (17).
- 4.9 It is perceived by Government that implementing and complying with the requirements of the Code will deliver the central Government expectation that business operating in comparatively lower risk premises should not be subject to proactive, unannounced inspections, unless there is reason to suspect poor performance.

- 4.10 In order to assess how local authorities are meeting the requirements of the Code, HSE will monitor local authority data returns. Where there is a lack of information or where the information prompts questions HSE will work with the local authority in question to assist their implementation and compliance with the Code. In addition, it is expected that via the inter authority peer review process that local authorities will support each other in implementing and complying with the code and providing assurance that they have done so.
- 4.11 HSE will annually publish a report detailing how local authorities are complying with this Code to provide transparency on regulatory activity carried out.
- 4.12 Where business considers that they operate in a lower risk sector and have been unreasonably subject to a proactive health and safety inspection by a local authority they can complain to the Independent Regulatory Challenge Panel whose members have the competence and experience to assess regulatory matters. They will look into the complaint and the outcome of their deliberations will be made publically available on the HSE website.
- 4.13 Where a complaint is upheld by the Panel HSE will work with the local authority to provide advice and assistance to improve and enable their implementation and compliance with the Code.
- 4.14 The focus of LAs is often broader than specific health and safety outcomes as they can also have an impact on wider public health outcomes / health inequalities. RS will use the list of national priorities for proactive inspection as well as local information and advice provided by Primary Authorities so that we can determine the key risks of serious workplace accidents, injuries and ill-health and will develop local intervention plans for poorly performing businesses. RS will then target resources more effectively using the whole range of available interventions to influence behaviours and improve the management of health and safety risks.

5. Key Service Drivers

5.1 Key service drivers are to:

- ensure that all premises where people work, visit or are entertained are safe for the purpose and without risk to health.
- improve the overall health and safety management standards within regulated businesses by providing a comprehensive risk based intervention strategy that targets resource at higher risk activities or where there is a history of poor compliance.

- provide a comprehensive health and safety enforcement and advisory service to business and other stakeholders.
- work in partnership with the HSE, other LAs and interested bodies to promote a positive health and safety culture.
- respond to and investigate accidents, dangerous occurrences and diseases reported to the City Council in accordance with the criteria in HELA Circular LA Code 22/13.
- investigate complaints in line with the HSE and the Councils' procedure on complaints about workplaces, taking appropriate action as necessary.
- act as Primary Authority for The Southern Co-operative.
- react to 100% of all notifications made under the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER).
- react to 100% asbestos ASB5 notifications.
- register premises and practitioners and enforce laws relating to tattooing, electrolysis, acupuncture, cosmetic piercing and semi-permanent skin colouring.
- maintain registers required by law.

6. Objectives

6.1 RS will continue to conduct its affairs in adherence with the principles of better regulation and the various legislative requirements relating thereto. In particular:

- Transparency
- Accountability
- Consistency
- Proportionality
- Utilising Intelligence led targeting

6.2 In pursuit of these principles the primary objectives of RS are:

- Delivering improved regulatory outcomes
- Reducing unnecessary burdens on business
- To maintain a common approach to enforcement policies
- Build safer, healthier and stronger local communities
- Achieve Consistency in advice and enforcement

7. The National Enforcement Priorities

7.1 The priorities of RS have been determined in line with and paying all due regard to the National Enforcement Priorities. These Priorities are as set out in the document published in November 2011 by the Local Better Regulation Office of "Priority Regulatory Outcomes: *A New Approach to Refreshing the National Enforcement Priorities for LA Regulatory Services*"

7.2 The Services priorities have been primarily focussed around following two out of the five key national priority areas:

- National Priority One: *Support Economic Growth, especially in Small Businesses by Ensuring a Fair, Responsible and Competitive Trading Environment*
- National Priority Four: *Help People to Live Healthier Lives by Preventing ill Health and Harm and promoting Public Health*

7.3 The RS continues to clearly recognise that as an enforcement body, it plays a key role in the delivery of key aspects of the Public Health Agenda. One of the key documents that outlines the role of LA services within the delivery of the Public Health agenda is the Public Health Strategic Plan 2016-2020.

7.4 RS intends to continue to strive to deliver effective support for legitimate business and consumers alike. The service clearly recognises that our key role is particularly important during the particular difficult economic period that is affecting the whole global economy.

7.5 Falls from height – work on/adjacent to fragile roofs/materials

Fragile roofs / skylights etc. can be found at many premises that fall to RS for enforcement. Where they are identified during visits we will discuss the associated risks to ensure that prospective clients for repair and maintenance work (owner or building user) are aware of their duties under the Construction (Design and Management) Regulations 2015 (24) and the precautions needed, referring them to the appropriate guidance

7.6 On occasions, RS may come across work on a fragile roof that is underway at the premises being visited (typically, small-scale repairs/maintenance such as gutter cleaning). The risks may give rise to a matter of evident concern (MEC), in which case, poor standards should be addressed with all duty holders - client, designers and contractors, and any enforcement action taken in accordance with the Health and Safety (Enforcing Authority) Regulations 1998 and in collaboration with HSE where appropriate and using normal channels.

7.7 Duty to manage asbestos

In premises likely to contain asbestos (i.e. built before 2000) RS will draw duty holders' attention to their duty to manage and the relevant HSE guidance / webpages. On occasions, failure to manage the risks from asbestos (e.g. failure to maintain in a safe condition or minor construction work that breaches the fabric of the building without proper surveys, controls or planning) may need to be dealt

with immediately as a MEC. Where management of asbestos risks arises as a MEC and standards are particularly poor, we should take appropriate enforcement action, collaborating with HSE where necessary and using normal channels.

7.8 Visitor attractions to prevent or control ill health arising from animal contact.

Show events in the city feature animals likely to spread bacteria via human contact RS will liaise with the Council's events team and work with the organisers to ensure that suitable precautions are in place to prevent an incident or outbreak arising from the lack of such measures.

8. Local priorities

- 8.1 Local information will also be used by RS to determine the key risks of serious workplace accidents, injuries and ill-health to identify their priorities.
- 8.2 Matters of Evident Concern (MECs) are defined as those that create a risk of serious personal injury or ill-health and which are observed (i.e. self-evident) or brought to the inspector's attention. Matters of Potential Major Concern (MPMCs) are those which have a realistic potential to cause either multiple fatalities or multiple cases of acute or chronic ill-health.
- 8.3 We will monitor MECs or MPMC's dealt with during advisory or other regulatory visits as well as complaints and incidents to identify any matters that may present a potential significant local issue.

9. Intervention Programme

- 9.1 RS will:
 - continue to record details of interventions in all premises recorded on the Council's database. The service will decide on an appropriate risk based intervention for the business and will update the risk rating of the premises accordingly.
 - continue to promote the proper management of asbestos within any premises where an issue has been identified. A stepped intervention approach will be taken and where advice has been previously given and the duty holder has failed to act, enforcement action will be taken. This intervention is based on evidence that asbestos is one of the greatest causes of workplace latent morbidity.

- continue with visits to check compliance with the Portsmouth Byelaws in respect to tattooing, acupuncture, electrolysis and cosmetic piercing of registered premises.
 - continue to review and update the detail and content held on the Council's website related to Health and Safety.
 - continue with the development of the policy on how the Council regulates Health and Safety in the workplace by implementing the findings of the Lofstedt review and guidance issued by the HSE to LA.
 - continue to recognise that "Health and Safety" is often incorrectly used as somewhat of a "convenient excuse" to stop what are essentially sensible activities going ahead. The service continues to make it clear that "health and safety" is about managing real risks properly, not being risk averse and stopping people getting on with their lives. Together with the HSE, the Council aims at dispelling the myths behind tabloid headlines concerning actions taken by businesses in the name of Health and Safety, thus changing attitudes and cultures towards health and safety.
 - carry out proactive inspections in accordance with the relevant Codes only at those premises with higher risk activities and at premises where there is intelligence showing that the risks are not being effectively managed.
 - will focus on specific safety concerns in catering premises in accordance with the Codes, namely carbon monoxide poisoning and the risk of gas explosion due to lack of suitable ventilation, unsafe and poorly maintained appliances and poor work procedures.
 - recognise its responsibilities with the Council's Licensing and Events services with respect to the safety issues associated with events. The Service will liaise with colleagues and advise where appropriate on any events held on the Council's land. The service cannot certify that a document, construction or practice meets legal requirements, unless it is specifically in a position to do so. If a conflict of interest is identified, the service will refer the matter immediately to the HSE.
 - continue to carry out intervention visits to premises where accidents have occurred as a result of the provision of poorly maintained facilities such as steps and flooring and where other interventions have highlighted risks in these premises.
 - focus on the prevention and the reduction in the number of falls from height in specific industry sectors such as tyre fitters and motor vehicle repairs (as part of car sales), theatres and large auditorium / places of entertainment, warehousing and steel stockholders. This may involve proactive inspections where risks are identified in the high risk sectors carrying out high risk activities or other interventions.
- continue to maintain the Portsmouth Tattooing Hygiene Rating Scheme. This is a new scheme and involves all registered tattooing premises in Portsmouth. The scheme is voluntary. Visits will then be made to all those who wish to participate

to assess them and give them a grading as shown in **Table 1** below. Successful applicants will then be provided with a window sticker reflecting their award and a dedicated website area will be set up for all the public to view.

Table 1

Level	Explanation
1. Satisfactory	Meets a number of criteria relating to hygiene and good practice
2. Good	Meets all of the criteria under Level 1, plus specified other criteria
3. Very good	Meets all of the criteria listed under Levels 1 and 2, plus specified other criteria

9.2 The Service will visit or carry out other interventions at premises where a risk from legionella has been identified.

9.3 Duties under the Health and Safety at Work etc. Act 1974 (HSWA) extend to risks from legionella bacteria, which may arise from work activities. The Management of Health and Safety at Work Regulations 1999 (MHSWR) provide a broad framework for controlling health and safety at work and more specifically the Control of Substances Hazardous to Health Regulations 2002 (COSHH) provide a framework of duties designed to assess, prevent or control the risk from bacteria like Legionella and take suitable precautions.

10. Service Analysis 2016 / 2019

10.1 RS will continue to respond to all enquiries and complaints as directed through to it. These enquiries and complaints typically come from a number of sources including the post, the services mailbox and from the HSE. **Table 2** details service interventions following contacts from consumers and businesses during the last 3 years.

Table 2

Intervention		2016 / 2017	2017 / 2018	2018 / 2019
Proactive inspections		15	35	30
Non-inspection interventions	Visits	6	7	3
	RIDDORS processed	166	140	112
Reactive visits	Visits in relation to incidents	6	7	5
	Visits in relation to complaints	4	7	4

	Visits following requests from businesses	0	0	0
Revisit following earlier interventions		3	30	32

10.2 Enforcement Action 2018 / 2019

Compliance with health and safety law remains consistently high. Whilst warning letters requiring improvement works have been sent to a number of businesses visited no formal actions have been necessary as business are working within their responsibilities for health and safety.

11. Government Response

11.1 It is the Government's overall intention to develop "*a different and more mature relationship with business*". Furthermore RS notes the Government's intention to address / implement the following:

- review all regulators.
- presume that co-regulation can be introduced.
- seeing existing regulatory regimes make much more use of "earned recognition".
- working with businesses and local authorities through Local Enterprise Partnerships to promote better local regulation.
- establishing a presumption that regulators should help businesses comply with the law.
- clarifying that no business should face a sanction for simply asking a regulator for advice.
- placing a new partnership between Government, regulators and businesses at the heart of the new regulatory system, bringing the expertise of the Better Regulation Delivery Office into Government.
- extending the Primary Authority scheme to improve the coherence, accountability and transparency of local regulation.
- strengthening inspection plans to deliver earned recognition for business.
- permitting more organisations to participate, within the Primary Authority scheme, benefiting small business.
- specifying policy areas, which are currently out of scope, within the Primary Authority scheme.
- retaining the Regulator's Code, giving it a higher profile, placing it at the heart of the reviews of regulators and ensuring that it is understood by customers.

12. Primary Authority

- 12.1 The primary authority regime is a statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008, that offers businesses operating across council boundaries the opportunity to be regulated in a new way. It was introduced by the government in 2009 to address concerns raised by businesses about how they are regulated by LA in areas such as environmental health, licensing and trading standards legislation. Business concerns included contradictory advice, unfocussed activity, duplicated efforts, and the lack of effective dispute resolution when councils disagree.
- 12.2 The Primary Authority enables a business to form a legally recognised partnership with a single local authority, which is called its "primary authority". The primary authority can provide the business with robust and reliable regulatory advice which other local authorities must take into account in their dealings with the business. In this way, Primary Authority promotes consistency and fairness in the way that local councils enforce regulations. A primary authority is also able to guide the way that other local authorities carry out checks such as inspections, by developing an inspection plan. The government is committed to developing primary authority and sees the scheme as playing a key role in its work to improve the way that regulations are enforced.
- 12.3 The Council currently has one primary authority partnership relating to Health and Safety, with the Southern Co-operative.
- 12.4 The chief impacts of participating in the scheme for our partners include:
- reducing the costs of complying with regulations
 - improving your confidence in the measures you are taking to comply and
 - reducing the costs associated with compliance failures.
- 12.5 The table as set out in [HSE LAC 67-2 Rev 4.1](#) identifies the list of activities / sectors that may be subject to proactive inspections by RS.

13. Regulators Code

- 13.1 The Health and Safety Service carefully notes the publication of the "Regulators Code" by BRDO on the 23 July 2013. The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006, replacing the Regulators' Compliance Code. It provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

13.2 Officers within RS 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.

14. Better Regulation

14.1 In July 2018 Government published a paper setting out its determination to demonstrate continuing discipline in the way it regulates, ensuring that the UK economy remains strong and competitive "*as we leave the EU*". The Government's published aspirations are to oversee a regulatory system that is increasingly proportionate, optimised for UK conditions, innovation friendly and easier for businesses to deal with. Government's ambition to support businesses through the development of an agile approach to regulation that promotes and supports innovation, growth of new sectors and the requirements of innovative market entrants – while ensuring effective protections for citizens and the environment.

15. Communications

15.1 RS through delivering its key priorities recognises the importance of continuing to develop its role in the communication to businesses and consumers of the work it becomes involved with. This communication strategy will involve the continuing development of the following:

- The continuing development and updating of information on the web-pages assigned the Health and Safety Service
- The use of the media, including the local press, radio and television and the Council's social media sites to continue to promote the work of the RS, as well as conveying important safety messages.

16. Working with Local Authority Partners

16.1 RS is represented on the South East Health and Safety Advisory Group (HESAG) comprising 17 local authorities. The panel shares knowledge and good practice across the region. The Service is also represented on the Hampshire and Isle of Wight Environmental Health Chief Officers Group where the above is undertaken at a strategic level.

17. Staff Training

17.1 RS in delivering its key priorities has, and continues to view the provision of training as fundamental to adding value to existing professional training and retaining competency levels for all officers against the background of change.

- 17.2 The need for all LAs to continue to fund training provision for officers to obtain qualifications in order to ensure the continued delivery of the statutory service.
- 17.3 The need for all local authorities to continue to fund training provision for existing qualified officers to renew their individual competency levels around all aspects of work that these officers engage in.
- 17.4 Therefore, as a direct consequence, the service will continue to ensure every opportunity that presents itself will be taken to address identified skills gaps subject to resources and capacity.
- 17.5 With our partners we will continue to attempt to provide any suitable training in partnership with others, as and when those particular opportunities emerge.

18. Concluding Summary

- 18.1 The Council's RS team remains committed to the protection and well-being of the public whilst supporting the growth of business.
- 18.2 The Service will continue to deliver its work plan in partnership with Central Government departments; key agencies; and organisations within the consumer landscape, together with legitimate businesses.
- 18.3 Local Government continues to undergo far reaching changes and the Service recognises and continues to adapt to the challenges presented by the new and evolving regulatory landscape of the future.
- 18.4 The resources currently available to RS to deliver its health and safety responsibilities are considered to be below those necessary to deliver the full range of functions and tasks as set out within this operating plan.

Annex 1

References

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