

# MPs Recommend Giving UK Local Authorities Power to Charge Employers for Health and Safety Enforcement Action

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There has been a general decline in health and safety inspection and enforcement by local authorities since 2010 principally due to reduced funding and competing priorities, according to the All-Party Parliamentary Group on Occupational Safety and Health (APPGOSH). According to their recent report, [“Local Authorities and Health and Safety”](#):

- the overall number of inspections and other interventions by local authorities fell by 65% between 2010 and 2016;
- the number of full-time local authority health and safety inspectors fell by nearly 47% between 2010 and 2017; and
- the number of enforcement notices issued by local authorities fell by 64% between 2010 and 2016/7.

However, one of their proposals, the extension of the Fees For Intervention regime (FFI) to local authorities, is likely to prove unpopular with employers, given the experiences of those sectors regulated by the Health and Safety Executive (HSE).

## **Challenging Assumptions**

In the report, APPGOSH challenges the assumption that workplaces which are regulated by local authorities (as opposed to the HSE), such as offices, shops, warehouses, and pubs and clubs, necessarily carry a lower health and safety risk. The report points to the high rates of injury and illness in warehouses, and of occupational disease in offices (stress), supermarkets (musculoskeletal disorders), and pubs (violence). According to the report, it is not the case that smarter regulation is taking place because, whilst the number of inspections and enforcement notices has more than halved, over the same period, the number of people being injured in workplaces has remained more or less constant and evidence suggests that there has been an increase in illnesses since 2010. Although occupational diseases may attract less regulatory attention than workplace injuries, the report states that they are a far bigger cause of ill-health and notes that they often do not manifest

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themselves in symptoms until years after the initial cause. In fact, the number of actual health and safety inspections by local authorities may be lower than official figures suggest, because, according to data collected by the HSE, visits for other purposes (for example, public health or licensing) are sometimes recorded as health and safety inspections.

## **The Role of the HSE**

The report notes that the HSE now directs the health and safety enforcement activity of local authorities and requires them to only make pro-active inspections in very limited circumstances. This, in part, has led to a 97% reduction in pro-active inspections between 2010 and 2016. However, the report adds that the HSE's guidance to local authorities on prioritising and targeting interventions makes no reference to work-related stress and only one reference to musculoskeletal disorders, even though they are responsible for two-thirds of sickness absence.

## **Primary Authorities**

The report refers to criticism levelled at the primary authority scheme, which allows an employer and a single local authority to form a statutory partnership whereby the local authority issues advice to the employer on health and safety compliance that the employer must follow, and which other local authorities must respect. Whilst often advantageous for both parties to the arrangement, the primary authority may have little knowledge of actual conditions and variations that may exist in another local authority's area. Also, it may not be the case that an employer is willing and able to address issues consistently in all of its branches without local inspection.

## **Recommendations**

The report makes a number of recommendations, including:

- more emphasis during inspections on health, rather than just safety;
- consideration being given to re-introducing compulsory pro-active inspection for all new premises or businesses regulated by the local authorities; and
- greater consistency between primary authorities in their approach to regulation.

Most controversial, however, is the suggestion that FFI be extended to local authority-regulated activities. FFI, which was introduced in October 2012, is the mechanism by which the HSE charges businesses in those sectors that it regulates for the costs of regulation. Where an HSE inspector determines that a business is in "material breach" of health and safety law (i.e. in the opinion of an HSE inspector, there is or has been a contravention of health and safety law which is so serious as to require that a notice in writing be issued), the business will be required to pay a fee representing the time spent identifying, investigating and taking enforcement action in respect of the material breach at a rate of £129 per hour. [We have previously written about the potentially divisive nature of FFI](#) and, although the panel that considers appeals against FFI invoices is now fully independent, many of the concerns about it remain.

## **Comment**

By extending FFI, the risk is that employers will be more suspicious of local authority inspections and dissuaded from working with inspectors to address actual or potential health and safety issues in an open and collaborative manner. Given that, as the report notes, two-thirds of workplaces and half of the workforce are covered by local authority health and safety regulation, the knock-on effects for the population as a whole could be wide-ranging.

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