Prohibition and Improvement Notices
Stephen Chessher, March 2005

Prohibition and improvement notices are powerful weapons in the enforcement armoury of the Health and Safety Executive.

A prohibition notice requires specified activities to cease, normally forthwith, and is commonly issued immediately following a serious accident if an inspector considers there is a likelihood of a repetition.

An improvement notice requires steps to be taken to improve health and safety by a specified date. Improvement notices are commonly issued following an accident but may be issued following a routine HSE inspection.

Prohibition and improvement notices can be appealed. In each case, contravention is an offence and is one of the few offences under the Health and Safety at Work Act which has a penalty of imprisonment in addition to or instead of a fine.

PROHIBITION NOTICES

- A prohibition notice may be served under s22 Health and Safety at Work Act if an inspector considers that an activity involves a risk of serious personal injury. There does not necessarily have to be a current or anticipated breach of a statutory duty. The activity which has been prohibited cannot be resumed until the risk has been ameliorated.

- A prohibition notice may but need not specify remedial measures to be taken.

- Appeal against a notice is to an Employment Tribunal (within 21 days unless extended).

Tactical Considerations

A prohibition notice may be a drastic remedy. It may be specific to a particular activity but may also be site or works wide. As an example of the latter, we were instructed following a fatal accident on a pipelaying contract. A prohibition notice was issued which banned use of mobile plant thus effectively closing down the site. The notice was not lifted for 4 weeks until new method statements had been agreed. The potential contractual costs in terms of delay and disruption and liquidated damages are obvious.

An appeal should be considered if the prohibition appears to be unreasonable, particularly if the scope of the notice appears to be excessive when weighed against the risk or dangerous activity. A prohibition notice may be suspended if, on the application of the appellant, the tribunal so directs. Therefore the applicant may be able to buy time by bringing an appeal.

Costs may be awarded at the discretion of the tribunal.

IMPROVEMENT NOTICES

- An improvement notice may be served under s21 Health and Safety at Work Act if an inspector is of the opinion that a person is contravening or has contravened and is likely to continue to contravene a relevant statutory provision.

- An improvement notice may but need not specify remedial measures to be taken. It will include a compliance date. The HSE has issued a pro forma schedule for a training program.
improvement notice for designers in the construction industry which is included at the end of this note.

- Appeal against a notice is to an Employment Tribunal (within 21 days unless extended). An improvement notice is automatically suspended from the time of bringing the appeal until the appeal is disposed of or withdrawn. Therefore the applicant can buy time by bringing an appeal. The appeal process may give the opportunity to negotiate a more acceptable form of notice with the HSE inspector. Costs may be awarded at the discretion of the tribunal.

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HSE Pro-Forma Schedule to Training Improvement Notice

*To comply with this improvement notice you should take the following measures:

1. Carry out a training needs analysis for all staff involved in design work in order to ensure that they have the skills, knowledge and experience to comply with the requirements of Regulation 13 of the Construction (Design and Management) Regulations 1994 (as amended), in order to be considered competent, designers will need to be able to demonstrate knowledge and understanding in the following areas:
   - The most common causes of accidents and ill-health in construction;
   - The main Health and safety legislation which is applicable to construction work, including designer duties under Regulation 13 of CDM;
   - An overview of the most commonly used risk avoidance methods adopted by designers in their particular discipline;
   - An understanding of when and how best to provide information about significant risks associated with their design to others in the supply chain;

2. Where the analysis identifies a training need, then you should prepare a timetable and schedule of training to meet these needs.

3. Develop a programme for the Continuing Professional Development of your design staff to ensure that they remain in touch with new developments in the field of health and safety in design.

Explanatory Note: (This does not form part of the notice)

Guidance to assist you in complying with this notice can be found in the following publications:

   - Video: 'The benefit of foresight' produced by the Construction Industry Council, 26 Store St, London WCIE 78T.
   - Video: 'High Designs' produced by HSE, available from HSE video's, PO Box 35, Wetherby, West Yorks, L523 7EX.

You may also wish to contact your professional body for information on their training assistance and recommendations on continuing professional development for designers."