

Improvement Notices and Prohibition Notices

HEALTH & SAFETY

Health and Safety Inspectors have the right to enter any workplace as part of their regulatory functions or for an investigation following an incident. They can then serve an Enforcement Notice where they consider there to be a breach of health and safety law. This can be in the form of either an Improvement Notice or a Prohibition Notice.

1 What is an Improvement Notice?

An Improvement Notice is where an Inspector issues a Notice on an employer telling them to do something to improve their systems in order to comply with the law. The underlying premise of an Improvement Notice is that an Inspector must consider there to be a breach of legislation. The Notice served on the employer requires the Inspector to identify the statutory provision which he/she considers has been breached. An Improvement Notice will say what needs to be done, why and in what period. The period of compliance should not be less than 21 days from the date of service of the notice. Improvement Notices are often accompanied by a Notice identifying remedial action suggested by the HSE in order to come into compliance with the HSE.

2 What is a Prohibition Notice?

Where the Inspector considers that the breach of duty is more serious and involves, or will involve a risk of serious personal injury, the Inspector can serve a Prohibition Notice prohibiting the activity from continuing and not allowing it to be continued until certain action has been taken. The Notice should explain why the action is taken and again should identify the statutory provision the Inspector alleges has been breached. However, provided that the inspector reasonably believes that there is a risk of serious personal injury, a contravention of a statutory provision is not necessary for a prohibition notice to be valid. The Notice should also explain why the Inspector is of such an opinion.

The requirement that an activity should not be continued until specified matters have been remedied, may either take effect immediately or be deferred until the end of a specified period. The decision to defer will be that of the Inspector and will depend on the risks associated with the specified activity continuing.

3 How should an Inspector serve a Notice?

There are strict requirements for serving a Notice which requires that service must be affected by delivering it to the person in question, leaving it at his or her proper address or by sending it to that person at that address. In the case of a company, it can be sent to the registered or principal office.

4 What if an employer does not agree?

There is an appeal process for both an Improvement Notice and Prohibition Notice. The time limit for making such an appeal is strictly enforced. An appeal should be made to an Employment Tribunal and must be made within 21 days from the date of service of the Notice. It is very rare that an Employment Tribunal will extend the time for making an appeal.

5 When should an employer consider an appeal?

If an employer does not consider that it is in breach of a statutory duty or that what is being prohibited or suggested is not reasonably practicable then, in most cases an appeal should be made. An appeal is heard by an Employment Tribunal who can either cancel or affirm the Notice having heard evidence from both the Inspector and the employer. An appeal of an Improvement Notice has the effect of suspending that Notice pending an appeal. A Prohibition Notice remains in force until the appeal is concluded.

6 Is there any relationship between the service of the Notices and prosecution following an incident?

The issuing of a Notice following an incident will not normally be considered by the HSE as an alternative to prosecution. Indeed, experience would suggest that where a Notice is served following an incident, then it is likely that the HSE will continue to investigate it to see whether prosecution is justified and, in those circumstances, will use the existence of a Notice to justify the basis for prosecution.

For these reasons it is particularly important, where a Notice is served following an incident, that consideration is given as to whether an appeal should be made or whether the Notice should be complied with only on the basis that no admission or breach of duty is accepted.

7 What if an employer considers that the Notice should be complied with without appeal?

An Improvement Notice will normally specify a period by which action should be taken to bring the employer into compliance. As stated, a Notice will often have a remedial notice identifying the types of action considered by the HSE as being compliant with the law. An employee should then comply with that timescale.

If an employer considers that a Prohibition Notice has been validly served then the employer must not continue with that activity. For example, if a Prohibition Notice was served for a machine without a guard then the machine should not be used until the guard is put in place.

It is a serious criminal offence to ignore an Improvement or Prohibition Notice.

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