

April 2025

## When we use court orders

### This policy's purpose

This policy sets out how we decide to apply for a court order under section 122 of the Health and Safety at Work Act 2015 (HSWA).

### What a section 122 order is

Our inspectors have the power under HSWA to issue notices to a person to change or stop a particular work activity or to prevent the disturbance of a site. Occasionally people refuse or fail to comply with those notices. Alongside the offences that exist for not complying with notices, an option exists for us to bring civil proceedings in the District Court under section 122. The Court can make an order:

- compelling a person to comply with a HSWA notice, or
- restraining a person from contravening a HSWA notice.

### When we can seek a court order

We can seek a court order for all notices under HSWA.

Before we seek a court order:

- we obtain and take into account legal advice
- we must have sufficient evidence to show a person is, or is likely to be in breach of a notice, and
- the person must have been uncooperative or have a history of non-compliance with notices.

We can seek a court order alongside other types of enforcement action or measures, including prosecution.

### How we decide when to seek a court order

Court proceedings have serious implications for victims, witnesses, and defendants. We make sure every decision to apply for a court order follows common law principles.<sup>1</sup>

We apply four criteria to guide our decisions about applying for court orders:

#### 1 The person's action or inaction in relation to the notice creates serious risk

To decide whether there is a serious risk we consider whether the risk:

- is immediate or imminent, or
- is likely to cause serious harm, or
- is part of a pattern of harm or poor risk management, or
- is likely to negatively impact our integrity as a regulator.

#### 2 The use of a court order is a reasonable response

The use of court orders must be a proportionate enforcement response to the circumstances. This means that the decision to apply for a court order is fair and unbiased. The court order must be proportionate to the context and be the right action relative to the risk to work health and safety.

<sup>1</sup> This means the decision is recorded and transparent, and that the basis for the decision is fair and avoids bias.

### 3 A court order is an effective way to gain compliance

When deciding whether to apply for a court order, we consider whether it is the most effective action that can be taken in the circumstances to achieve compliance.

Considerations here may include:

- the timeliness of the court order process
- the person's compliance history (for example, is there a pattern of non-compliant behaviour?), or
- other enforcement action or measures we've taken or may have planned.

### 4 A court order is a good use of resources

The court order process can be costly, due to the time and resources required for the application and any court hearings. This process affects both us and the Courts. We consider whether it is the best decision in the circumstances when balancing our resources with the seriousness of the risk and other enforcement options.

## After a court order is granted

When a court order is granted, we monitor the person's compliance. If a person complies with or doesn't breach the notice,<sup>2</sup> then they will not breach the court order.

Breaching a court order may result in the person being found in contempt of court, which can result in severe penalties including fines and imprisonment.

<sup>2</sup> A section 122 court order will be to comply with or not to contravene a specific notice, whether or not the compliance period for the notice has expired.