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CITY COUNCIL



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REPORT TO EXECUTIVE

PORTFOLIO AREA: INFRASTRUCTURE, HOUSING, ENVIRONMENT AND TRANSPORT, AND CORPORATE SERVICES

Date of Meeting: 20th March 2006

Public

Key Decision: No

Recorded in Forward Plan: No

Inside/Outside Policy Framework

Title: Health and Safety Enforcement & Accident Investigation Protocols
Report of: Director of Community Services
Report reference: EPS 03/06

Summary: Section 18(4) of the Health and Safety at Work etc Act 1974 requires local authorities to perform their duties in accordance with guidance issued by the Health & Safety Commission. This requires that the Health and Safety Enforcement Protocol of the Local Authority be approved by Members.

Recommendations:

1. That the Health & Safety Enforcement Protocol be approved.
2. That the Accident Investigation Protocols be noted.

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Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1. BACKGROUND INFORMATION

The Health and Safety Commission (HSC) recently revised its Enforcement Policy Statement and has issued revised guidance to local authorities under Section 18 of the Health and Safety at Work etc Act 1974. The Best Value Performance Indicator for Environmental Health, BV166, also includes a requirement to have in place a written Enforcement Protocol and an Accident Protocol which contain specific information, in accordance with the Section 18 Guidance.

Local Authorities are required to make adequate arrangements for the enforcement of health and safety law. Section 18(4) of the Health and Safety at Work etc Act 1974 requires local authorities to perform their duties in accordance with guidance issued by the HSC. In October 2002, HSC issued revised Section 18 Guidance. This guidance is mandatory and sets out the broad principles and framework in which local authorities should operate. It states that "local authorities, as enforcing authorities, must ensure that their approach to enforcement is consistent with the policy set out in the current HSC's Statement of Enforcement Policy" It also requires that the Health and Safety Enforcement Protocol be approved by Members.

Development of these protocols and obtaining Member approval for them were identified in the action plan drawn up as a result of the recent Inter Authority Audit into the Management of the Council's Health and Safety Enforcement. A report outlining the process on delivering this action plan will be presented to executives in the next few weeks.

Health & Safety Enforcement Protocol (attached at Appendix 1)

The Health & Safety Enforcement Protocol satisfies the principles of the Enforcement Concordat which has been adopted by the Council. It is supported by a range of other procedural documents which provide information and guidance for Enforcement officers. These documents do not require Member approval.

Accident Investigation Protocol (attached at Appendix 2)

The HSC's guidance on accident investigation states that local authorities should allocate sufficient time and resources for the investigation of accidents. The HSC recognises that it will not generally be possible to investigate all accidents and suggests that a systematic approach be taken whereby clearly stated criteria exist on which decisions to investigate are based. This should ensure that the more serious accidents receive attention.

The Protocol makes reference to the Council's recognition of the need to support HSE / LA Enforcement Liaison Committee (HELA) objectives and additional information at section 4 on working with others.

The Accident Investigation Protocol sets out the criteria to be considered in deciding whether or not an accident warrants investigation. This will help ensure consistency and transparency in the Council's response to accidents by providing a framework for officers to follow.

The Council is required by the HSC and by BV166, to publish its enforcement protocols in order that the decision-making processes are widely available. The attached documents will all be published on the Council's website and reference is made to their existence on the 'report of visit' form provided to businesses after every routine health and safety inspection.

2. CONSULTATION

- 2.1 Consultation to Date: Health & Safety Executive
- 2.2 Consultation proposed. Nil

3. RECOMMENDATIONS

- 3.1 The Health & Safety Enforcement Protocol be approved
- 3.2 Accident Investigation Protocols noted

4. REASONS FOR RECOMMENDATIONS

The attached Health and Safety Enforcement Protocol and the Accident Investigation Protocol have been produced in accordance with the requirements of the HSC.

The Protocols set out the general principles and approach the Council will take when enforcing health and safety law and investigating accidents and incidents where the Council has a statutory enforcement role.

The Protocols also provide information for employers, employees and the public on the standards they can expect from the Council.

5. IMPLICATIONS

- Staffing/Resources – Nil
- Financial – Nil
- Legal – S 18 Guidance is mandatory therefore the Council has a duty to comply with its requirements
- Corporate – Nil
- Risk Management – The failure to improve the City Council's performance of management and delivery of statutory health and safety functions may cause the Health and Safety Executive to subject the council to greater scrutiny with the possibility that they may take over the service and charge for doing so

There is also a risk to the City Council's reputation if performance does not improve.

- Equality Issues/Impact on Customers – The protocols provide details of the standards that the Council works to
- Environmental – Nil
- Crime and Disorder – Nil

Carlisle City Council

Health and Safety Enforcement Protocol

1. Introduction

1.1 In relation to health and safety it is Carlisle City Council's aim to protect the health, safety and welfare of people at work and to safeguard others, principally members of the public, who may be exposed to risk from work activities. The Council aims to achieve this by education, providing advice and by regulating the activities of others. An important part of this is the appropriate use of enforcement powers to secure compliance with legal requirements.

1.2 The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities may be held to account, which may include bringing alleged offenders before the courts.
- Prevent accidents and ill health

1.3 The enforcement processes include:

- Intervention – to assess, promote and ensure compliance with the law, to deal immediately with serious risk and prevent accidents and ill health from occurring;
- Investigation – after an incident has occurred with the aim of identifying underlying causes and the lessons to be learned, preventing recurrence, detecting breaches of legislation and taking appropriate action;
- Permissioning – to ensure that appropriate licences are in place where legally required to allow close control of those activities where the potential for significant health impairment is high;
- Taking action – to ensure that action is taken that is proportionate to the risk.

1.4 Enforcement of criminal law is distinct from civil claims for compensation. Although enforcement action may not be taken, civil claims may be appropriate. Enforcement is not intended to assist claims for compensation.

- 1.5 The term enforcement has a wide meaning and applies to all dealings between the Council and those on whom health and safety law places duties, employers, the self-employed, employees and others.
- 1.6 Authorised Officers will seek to secure compliance with the law informally by information, advice and support, both face to face and in writing, but where appropriate will issue written warnings, serve improvement and prohibition notices, issue formal cautions and prosecute.
- 1.7 The appropriate use of enforcement powers is important, in order to secure compliance with the law and to ensure that those who have duties under it may be held to account for their failure to safeguard health, safety and welfare.
- 1.8 When judging compliance with the law Authorised Officers will take into account relevant codes and guidance, use sensible judgement about the extent of the risks and the effort that has been applied to counter them.
- 1.9 The Council has:
 - a published Environmental Services Enforcement Protocol.;
 - a published Accident Investigation Protocol;
 - signed up to the Enforcement Concordat.

2. The Principles of Enforcement

The Council believes in a firm but fair approach to the enforcement of health and safety law and has adopted the Enforcement Concordat, agreed between the Cabinet, Home and Scottish Offices and local authority associations. This commits the Council to being open, helpful and fair, and careful to ensure that any action taken in applying the law to secure compliance will be proportionate to risk.

The principles of good enforcement are set out below:

2.1 Proportionality

- 2.1.1 Proportionality means relating enforcement action to risk. The Council will aim to minimise the cost of compliance for business by ensuring that any action required is proportionate to the risk.
- 2.1.2 As far as the law allows, the Council consider the circumstances of the case and the attitude of the duty holder when considering action (in effect how far the duty holder has fallen short of legal requirements and the extent of the risks arising from the breach.
- 2.1.3 Some health and safety duties are specific and absolute. Others require action 'so far as is reasonably practicable'. The Council will apply the principle of proportionality in relation to both kinds of duty.

2.2 Targeting

- 2.2.1 The Council will ensure resources are targeted primarily on those activities which give rise to the most serious risks or where the hazards are least well controlled. Action will be focused on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers or others.
- 2.2.2 The Council follows a national priority rating system for inspections. It has separate procedures available for the investigation of accident and complaint.

2.3 Consistency

- 2.3.1 Consistency of approach does not mean uniformity of approach, it means taking a similar approach in similar circumstances to achieve similar ends.
- 2.3.2 The Council has arrangements in place to promote consistency in the exercise of discretion, including arrangements for liaison with other enforcing authorities.

2.4 Transparency

- 2.4.1 Transparency means helping duty holders to understand what is expected of them and what they should expect from inspectors, including distinguishing between statutory requirements which are compulsory and advice or guidance which is desirable but not compulsory.
- 2.4.2 Arrangements are in place for keeping employees, their representatives and victims or their families informed. These arrangements have regard to legal constraints and requirements.

2.5 Accountability

- 2.5.1 Authorised Officers are accountable to Members, the public and Parliament for their actions. The Council has policies and procedures against which it can be judged, and has an effective, accessible mechanism for dealing with comments and complaints.

2.6 Decision Making

- 2.6.1 The Council authorises officers to carry out the duties it has decided they are competent to do. Current legislation, approved codes of practice and technical guidance will be available for reference and the Council has detailed procedures on all aspects of the health and safety service which provide guidance for officers and aim to promote consistency, including a Health and Safety Enforcement Procedure which supports this Protocol.

3. Prosecution

- 3.1 The primary role of enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution must be regarded as an essential part of enforcement.
- 3.2 Enforcing authorities must use discretion when deciding to bring a prosecution. Where circumstances warrant it and there is evidence to support a case, enforcement authorities may prosecute without prior warning or recourse to alternative sanctions.
- 3.3 The decision to prosecute should have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors.
- 3.4 A prosecution will only be considered when there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.
- 3.5 Subject to these two tests the Council will normally prosecute where one or more of the following apply:
- Death as a result of a breach of the legislation.
 - The alleged offence was extremely serious, taking into account the seriousness of any actual or potential harm, and the general record and approach of the alleged offender.
 - There has been reckless disregard of health and safety requirements.
 - There have been repeated breaches of legislation giving rise to significant risk, or persistent poor compliance and it appears that management is neither willing nor structured to deal with these circumstances.
 - The duty holder's standard of managing health and safety is found to be far below that required by health and safety law and is giving rise to significant risk.
 - Work has been carried out without, or in serious breach of, an appropriate licence.
 - There has been a failure to comply with an Improvement or Prohibition Notice or there has been a repetition of a breach that was subject to a formal caution.
 - Authorised Officers have been intentionally obstructed in the lawful course of their duties.
 - False information has been wilfully supplied, or there has been intent to deceive in relation to a matter which gives rise to significant risk.

- There have been serious failures in the management of health and safety.
- A breach, which gives rise to significant risk, has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.
- The prosecution is a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.

3.6 The Council will seek to recover costs from offenders convicted of health and safety breaches in the courts

3.7 Where Authorised Officers are assaulted, police assistance will be required, with a view to the prosecution of the offender.

4. Prosecution of Individual

4.1 Subject to 3 above, the Council will identify and prosecute individuals if they consider that a conviction is warranted and can be secured. The Council will consider the management chain and the role played by individual directors and managers and will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this Protocol.

4.2 Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986.

5. Formal Caution

5.1 In cases where there is sufficient evidence of the suspected offender's guilt to give a realistic prospect of conviction, the Council may, subject to the following, consider issuing a formal caution:

- Is a formal caution in the interests of the public considering the seriousness of the offence?
- Is there is mental illness, impairment or severe physical illness
- The suspected offender's attitude.
- The views of the injured party.
- The nature and extent of any harm or loss.

6. Death at Work

- 6.1 Where there has been a breach of legislation leading to a work-related death, liaison will take place with the Police, Coroner and Crown Prosecution Service (CPS) and where there is evidence suggesting manslaughter this will be passed to the police or where appropriate the CPS.
- 6.2 If the police or the CPS do not proceed with a manslaughter case the Council will bring a health and safety prosecution if appropriate. Regard will be had to 'Work-Related Deaths : a Protocol for Liaison' (HSE booklet MISC 114).
- 6.3 This protocol has been agreed between the Health and Safety Executive (HSE) the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS). It sets out the principles for effective liaison between the Health and Safety Executive, Police Forces and the Crown Prosecution Service in relation to work related deaths, in particular if there is evidence that the crime of manslaughter or corporate manslaughter may have been committed.
- 6.4 The police will be informed immediately if there has been a serious accident that may result in the death of an individual.

7. Publicity

- 7.1 The Council will normally issue a press statement following conviction and inform the HSE. Information will also be available on improvement and prohibition notices that have been issued in accordance with the Environment and Safety Information Act 1988.

8. Action by the Courts

- 8.1 Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences.
- 8.2 During a prosecution, the Council will, when appropriate, draw the court's attention to the guidance from the Court of Appeals on the factors which should inform sentencing in health and safety cases, that is fines must be large enough to reflect the seriousness of the offence (R v F Howe and Son (Engineers) Ltd [1999] 2 AU ER).
- 8.3 Where the case is of sufficient seriousness, the Council will indicate to the magistrates that the offence is so serious that they may refer it to be heard or sentenced in the higher court where higher penalties can be imposed.

9. Overlapping Legislation

- 9.1 The Council will not generally investigate or enforce under health and safety law where health and safety is adequately guaranteed by enforcement of more specific legislation by another authority.

10 Enforcement in Premises where Carlisle City Council has an Interest

- 10.1 Carlisle City Council cannot take action against itself nor should it be called upon to do so. Where the Council are clearly duty holders, the premises will be transferred to the Health and Safety Executive for enforcement, if not already on their database.

- 10.2 Where an enforcement role is retained in respect of premises in which the Council has an interest it will:

- Carry out enforcement in exactly the same way it does in all other premises.
- Ensure that the attention received is in accordance with the criteria applied to other duty holders.
- Where there is conflict of interest, discuss the matter with the HSE to determine the appropriate course of action.

11. Enforcement Action in Private Clubs

- 11.1 Where there is no employment, the Council is not able to intervene from a health and safety perspective. Where a person is employed, any inspection of the premises will deal only with those areas relative to employment. Inspections may be carried out if members of the public who are not club members are put at risk by club activities. A response will also be made to complaints or serious incidents.

12. Working with Others

- Lead Authority Partnership Schemes

If the premises are linked to another Local Authority by way of the Lead Authority Partnership Scheme, officers shall, when considering formal action, discuss the matters with that authority (except in cases of immediate action).

- Licensed Outdoor Activity Centres

Authorised Officers will liaise with the Adventure Activities Licensing Authority as detailed in Adventure Activities Licensing Regulations 1996 HELA LAC 47/10.

- Health and Safety Executive

Authorised Officers will notify the HSE where they see any practice of a licensed body contravening the conditions of that licence.

Authorised officers will refer complaints and accidents to HSE for which they are the enforcing body

- Licensed Sports Grounds

Authorised Officers will liaise with the certifying authority as detailed in HELA LAC 63/2 - The relationship between Safety of Sports Grounds Acts 1975 (as amended by Fire Safety and Safety of Places of Sport Act 1987) and Health and Safety at Work etc Act 1974.

- Fire Authority

Authorised Officers will inform the fire authority if they become aware of deficiencies in general fire precautions, or if any of their actions will affect existing fire precautions or take the appropriate action if there is an immediate risk of life involved.

- Liaison with Expert Bodies

Other specialist organisations and governing bodies will be consulted where appropriate.

13. Penalties for Health and Safety Offences*

13.1 The Health and Safety at Work etc Act 1974 (HSWA), Section 33 (as amended) sets out all of the offences and maximum penalties under health and safety legislation.

13.2 Failure to comply with an Improvement or Prohibition Notice, or a Court Remedy Order (issued under HSWA, Sections 21, 22 and 42 respectively):-

Lower Court Maximum £20,000 and/or 6 months imprisonment

Higher Court Maximum Unlimited fine and/or 2 years imprisonment

13.3 Breach of Sections 2-6 of the HSWA, which set out the general duties of employers, self employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

Lower Court Maximum £20,000

Higher Court Maximum Unlimited fine

- 13.4 Other breaches of the HSWA and breaches of 'relevant statutory provisions' made under the Act, which include all health and safety regulations. (These impose both general and more specific duties, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment)

Lower Court Maximum £5,000

Higher Court Maximum Unlimited fine

* As at January 2004 (These penalties can change from time to time)

- 13.5 Contravening licence requirements or provisions relating to explosives. (Licensing requirements apply to nuclear installations, asbestos removal and storage and manufacture of explosives). All entail serious hazards which must be rigorously controlled.

Lower Court Maximum £5,000

Higher Court Maximum Unlimited fine and/or 2 years imprisonment

- 13.6 On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of HSWA Sections 36 and 37), the Courts may also make a disqualification order (Company Directors Disqualification Act 1986, Sections 1 & 2). The Courts have exercised this power following health and safety convictions. Health and safety inspectors will draw this power to the Court's attention whenever appropriate.

Lower Court Maximum 5 years disqualification

Higher Court Maximum 15 years disqualification

14. Monitoring of this Protocol

- 14.1 It is essential that in setting a Protocol for officers to follow, it should be followed. To ensure this, the Council has in place a monitoring system whereby the Lead Officer for Health and Safety checks and records on a regular basis that authorised officers are adhering to the Council's various health and safety policies and procedures.

15. Contacts and Complaints

- 15.1 Service users who are dissatisfied with the health and safety service provided, or who wish to make any comments on the Council's Health and Safety Protocol and Procedure, are asked to let the Council know. The Council is committed to providing quality services and suggestions and criticisms about any aspect of the service will help it to improve.

15.2 The Council deals with complaints in the strictest confidence. Wherever possible, complaints will be dealt with informally by the case officer, the Lead Officer for Health and Safety or another Senior Manager. If this does not resolve the matter to the complainant's satisfaction, the Council has a formal complaints procedure, details of which will be provided on request and are available on the Council's website at www.carlisle.gov.uk.

15.3 The contact details for the Council's Health and Safety Team are:

Environmental Protection Services

Civic Centre

Rickergate

Carlisle

CA3 8QG

Tel: 01228 817336

Fax: 01228 817346

E mail: eps@carlisle.gov.uk

Carlisle City Council

Accident Investigation Protocol

1. Introduction

- 1.1 It is the policy of Carlisle City Council to ensure that where they are the enforcing authority, accidents, dangerous occurrences and reportable diseases are investigated using a systematic approach which takes into account the Council's Health and Safety Enforcement Protocol, the Health and Safety Commission (HSC) and the Health and Safety Executive / Local Authorities Enforcement Liaison Committee (HELA) strategic priorities.
- 1.2 The Council will allocate sufficient time and resources to investigate accidents, dangerous occurrences and cases of occupational ill health. However, it will not be possible, nor is it necessary, to investigate all such incidents and this Protocol ensures that the most serious will receive appropriate attention in accordance with HSC / HELA objectives and priorities.
- 1.3 The purpose of this document is to give guidance to officers in deciding which accidents, dangerous occurrences and reportable diseases should be investigated.

2 Investigations

Investigations include telephone calls, notes, memoranda, correspondence, advice and site visits made to premises where the Health and Safety at Work etc Act 1974 applies.

2.1 Reasons for investigation:

- (i) to investigate the cause;
- (ii) to determine whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- (iii) to determine whether any specific breaches of legislation have occurred;
- (iv) to increase the knowledge and awareness of the employer/employee;
- (v) to determine whether lessons can be learnt;
- (vi) to achieve any publicity arising from the incident which would have a beneficial effect is increasing knowledge and awareness of the management, general workforce and public.

2.2 Factors to consider when deciding whether an investigation is warranted: (the decision tree at annex 1 may be helpful in this process)

- (i) the severity and scale of potential or actual harm;
- (ii) the seriousness of any potential breach of the law;
- (iii) knowledge of the duty holder's past health and safety performance;
- (iv) the enforcement priorities;
- (v) the practicality of achieving results;
- (vi) the wider relevance of the event, including serious public concern.

3. The criteria for investigation

3.1 Accidents or dangerous occurrences or diseases which will always be investigated:-

- (i) **Fatalities**, irrespective of cause, excepting those outside the enforcing authority's jurisdiction, e.g road traffic accident¹. If during an investigation officers suspect manslaughter, evidence will be referred to the police
- (ii) **Major Injuries** as defined in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), irrespective of the cause:-
 - all amputations of digits past the first joint
 - amputation of hand/arm or foot/leg
 - serious multiple fractures
 - crush injuries leading to major organ damage
 - serious head injuries including loss of consciousness
 - full skin thickness burns and scalds
 - permanent blinding of one or both eyes
 - scalping
- (iii) All notified instances in the following categories:-
 - workplace transport incidents
 - electrical incidents
 - falls from a height of greater than 2m
 - confined space incidents

- (iv) Loss of consciousness caused by asphyxia or exposure to a harmful substance or biological agent.
- (v) All reported cases of disease that meet the criteria for reporting under RIDDOR, except those arising from circumstances/situations which are already under investigation.

3.2 Accidents and incidents where investigation is dependent on the circumstances

Investigation of other accidents and incidents is optional, dependent on the circumstances and a subjective assessment will be made in each case.

The following will normally be investigated:-

- (i) All incidents which are likely to give rise to serious public concern².
- (ii) Irrespective of the potential for serious public concerns, any incident where there is an apparent or actual serious breach of health and safety law.
Dangerous occurrences will be investigated where it appears from the report that the outcome, potential outcome, or apparent breach of law is serious.
- (iii) Accidents or incidents which have been occurred previously at a particular business.
- (iv) Accidents to young persons or children.

3.3 Carlisle City Council and the HELA Strategic Plan

Accident and incident investigation which will be carried out to support the HELA Strategic Plan outside the above criteria will be detailed in the Annual Service Plan.

3.4 Training of Inspectors

Accidents and incidents may be investigated outside the above criteria to assist with the training of inspectors.

4. Working with Others

- (i) Police and Crown Prosecution Service

In any fatality, critical injury or suspected manslaughter, the Council and the police will work together until it is agreed which party will go forward with any prosecution.

- (ii) The Coroner's Inquest

If required, the Council's Authorised Officers will provide information for the inquest prior to and at the inquest. When a decision has been made to prosecute this will not happen until after the coroner's inquest and public inquiry.

(iii) Health and Safety Executive

The HSE will be consulted when specialist advice is required or an offence under Section 6 of the Health and Safety at Work etc Act 1974 (general duties of manufacturers), has occurred.

(iv) Lead Authority Partnership Scheme

If the premises are linked to a local authority by way of the Lead Authority Partnership Scheme, officers shall, where appropriate, discuss the incident with the lead authority and shall always notify the lead authority if there is any death, major injury, work related illness or dangerous occurrence.

(v) Outdoor Activity Centres

Where appropriate, officers will liaise with the Adventure Activities Licensing Authority as detailed in HELA LAC 47/10.

(vi) Licensed Sports Grounds

Where appropriate, officers will liaise with the certifying authority as detailed in the HELA LAC 63/2.

(vii) Commission for Social Care Inspection & OFSTED

Where appropriate, officers will liaise with the registering body as detailed in any memorandum of understanding.

¹ In particular, suicides and death from natural causes are excluded.

² Public concern means concern to the public in general rather than to those individuals immediately involved. Unless there is clear evidence to the contrary, the presumption is that incidents which involve children, vulnerable adults, multiple casualties, and where also the outcome, potential outcome or breach is serious, will be included, all incidents resulting in RIDDOR-defined major injuries, where it appears from the report that there is likely to have been a serious breach of health and safety law.