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| Open Government status: open | HELA Paper Number: H11/07 |
| | Meeting Date: 4 July 2011 |
| Exempt material: None | Type of Paper: Below the line |

**Conflicts of interest - The Independence of LA HSWA Regulation
in premises where they have an interest as a dutyholder**

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Cleared by Elaine Harbour on 15 June 2011

Issue

- 1) The creation of guidance to deal with the potential conflict of interest between LAs as duty holders and enforcers in premises with a degree of LA ownership or perceived managerial involvement.

Timing

- 2) For information at the meeting.

Recommendation

- 3) That HELA notes the intention to form an HSE/LA working group to progress the development of the current LAC 22/10¹.

Background

- 4) The allocation of enforcement authority is governed by the Health and Safety (Enforcing Authority) Regulations 1998. These Regulations set out the circumstances in which a local authority or HSE are the enforcement authority (EA). The Regulations also include arrangements for transferring responsibility between different EAs and arrangements for assignment in cases of uncertainty.
- 5) The now withdrawn Local Authority Circular (LAC) 22/10 set out guidance to assist LAs in addressing LA enforcement in premises where they may have an interest (ownership or management involvement). The guidance asked LAs to consider and make arrangements to deal with conflict of interest eventualities before they arise by including such matters in their enforcement policies and via good practice. In practice such mapping/planning exercises were difficult for some to achieve and LAC 22/10 was suggested to be generally ineffective in determining just how significant a conflict of interest may be.

¹ Although withdrawn LAC22/10 is still available to view on HELex

- 6) The LAC 22/10 was withdrawn in July 2008 on the basis that it was time-expired and not because it was no longer relevant. In the absence of revised guidance it still continued to be used to inform deliberations of these issues.
- 7) At the April 2010 HELA meeting it was agreed that HSE LAU would progress research into the Independence of Local Authorities as Regulators. The proposal was for research to be undertaken with the aim of examining the current legal position and case law to establish possible options that HSE may wish to pursue with LA consultation to ensure that LAs do not find themselves in a position in which there may be a conflict of interest, or the perception of one. This could if necessary, lead to new guidance.
- 8) LAU conducted a limited review of how Other Government Departments and Agencies deal with similar issues. Findings were used to produce an early draft of revised guidance (LAC 22/10).
- 9) On 4th March the early draft of the revised LAC22/10 was used in a HSE/LA workshop to stimulate discussion and engagement and help capture practitioner experience and explore associated issues. This led to the identification of further issues that need to be resolved and that practitioners would prefer the final LAC to be developed into a flow diagram based tool to support decision making. In addition, guidance in this area was particularly pertinent, as ongoing financial pressure means that it is likely that LAs will be diversifying/developing their business delivery models.

Argument

- 10) Conflicts of interest have the potential to cause regulatory inertia, the expenditure of additional regulator resources to deal with legal resolution and reputational loss. The current guidance is considered by some LAs to be unhelpful and given the drive to reduce costs and a consequential increase in outsourcing it is likely that there will be a greater potential for such situations to arise.
- 11) In '*Good Health and Safety, Good for Everyone*²' the Government has set out its next steps to reforming the health and safety system in Britain. Conflicts of interest could hamper the aim of taking enforcement action against rogue employers who are putting the safety of their staff and the public at risk.
- 12) To take development of the guidance forward a broader range of practitioner perspective is required with greater user buy-in for the final guidance. For this reason a joint HSE/LA HELA working group with possible dutyholder involvement is considered to be the most effective means of developing a finalised revised LAC 22/10. We envisage this to be an LAU led task and finish working group with much of the work done via correspondence. Policy Forum members will be canvassed for their involvement and the intention is to discuss the revisions at the next meeting of the Policy Forum.

² <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf>

Consultation

13) LG Regulation and HSE's Field Operations Division and Health Unit and Public Services Sector have been consulted in the drafting of this paper.

Presentation

14) Once finalised HSE will publicise the details of revised LAC guidance via HELEX and Partnership News.

Costs and Benefits

15) Conflict of interest can lead to problems in undertaking effective investigations and enforcement action. There can also be substantive financial costs involved (for HSE and LAs) if issues cannot be satisfactorily resolved locally and a judicial review is undertaken.

16) Preventing conflicts of interest also helps prevent additional distress and inconvenience the family of the injured person/deceased.

17) Potential press interest means there is a reputational risk to HSE and LAs, and there could be a negative impact upon HSE's relationship/partnership with LAs following a dispute.

18) We anticipate that conflict of interest situations may arise more frequent with the increased diversification and subcontracting of services by LAs producing a range of situations that are not reflected in the EA Regulations.

Action

19) That HELA notes the intention to form a task and finish group, with LA and HSE representation to progress the redevelopment of LAC 22/10. This would have the aim of producing a fit for purpose flow chart tool that will support decision making and is easier to utilise than previous guidance.

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