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S 18 Guidance - update

Issue

1. The draft S18 guidance is undergoing consultation within HSE and LACoRS Policy Forum following a widespread consultation exercise last autumn. HELA Members are invited to contribute, and specifically agree the timetable for publication.

Recommendation

2. HELA is invited to comment on the current draft S18 standard and confirm that they wish to publish the new standard to become effective from April 2007.

Background

3. Section 18 (S18) of the Health and Safety at Work etc Act 1974 (HSWA) requires HSE and LAs to make adequate arrangements for the enforcement of the relevant statutory provisions. S18 also requires LAs to perform this duty in accordance with such guidance as the HSC may give them. This guidance is commonly known as "Section 18 Guidance". In addition HSE is required to give effect to any direction given to it by the HSC under Section 11 (4) (b) HSWA. S18 Guidance issued by the HSC has been the primary means of describing what constitutes adequate arrangements for enforcement for the LAs.
4. The Statement of Intent agreed between HSC/E and LA representative bodies in July 2004 recognised that it was necessary to examine and adapt as necessary the institutions and legal framework which currently underpin the relationship between HSC, HSE and LAs; and to develop arrangements for monitoring and auditing the work of the enforcing authorities, which properly reflects the status of HSE and LAs as partners.
5. The work to achieve this has included a review of S18 Guidance. The purpose of the review was to reconsider the policy, content, substance and weight of the guidance in order to reflect and support the new and developing partnership and to produce guidance that addressed an emerging range of issues e.g. the Hampton Review and establishment of the Local Better Regulation Office, best use of joint resources and the equivalent status of LAs and HSE, etc. Progress is reported in Annex 1.

6. As part of the review, a series of 10 GB-wide consultation workshops were held in November 2005 and attended by a total of 551 LA and HSE delegates. In summary, there was support from workshop delegates for the following:
 - a prescriptive S18 standard that allowed for local priorities and flexibility
 - a single regulatory S18 standard for both HSE and LAs.
 - the principle that the S18 standard should focus on how EAs will 'make a difference' and have an impact on improved health and safety outcomes.
 - the S18 framework being consistent with the emerging Better Regulation Executive (and Local Better Regulation Office) frameworks and the Hampton Review on LA regulatory services.
 - capacity was an issue with many LA delegates wishing to see a clear statement of the resources needed to carry out their duties.
 - the need for regular independent auditing with sanctions available to deal with poor performing LAs.
7. The responses from the workshops were reported to the meeting of the Health and Safety Commission and Local Government Panel (LGP) on 9 May 2006. The Panel discussed the degree to which the new Section 18 standard should be prescriptive. The Panel felt that whilst practitioners might feel that prescription would help with securing resources this would be less popular with senior managers and politicians because it could hinder the flexibility needed for the delivery of local services so as to address local needs.

Argument

8. The attached draft S18 standard has been re-drafted to reflect the consultation workshops, the comments of the LGP and the original purpose of the review. It has been written to apply to LAs and those parts of HSE that have an equivalent function i.e. predominantly Field Operations Directorate (FOD) whilst recognising the differences in the two organisations.
9. The draft S18 standard consists of an introduction, 5 principles – that is "Make a Difference...." - the raison d'etre for a service; "Work Together...." - the acceptance that to meet our aims we need to work with and through others; "Do it Right....." making sure we make effective targeted interventions; "Make it Happen....." having the capacity and mechanisms to work in partnership, undertake effective interventions and monitor performance and; "Sell the Story...." communicating our successes and spreading the right messages – this is followed by a standard describing what these principles mean in practice and provides electronic links to further information. It is intended to be an electronic document available to LAs and HSE via the HELA Extranet and is designed to be flexible as new guidance emerges.
10. It still has a number of "rough edges" reflecting its status as work in progress including the need for some drafting work on the "Principles" and "Standard", the development of

some of the "further links" material e.g. Advice to Local Authorities on inspection programmes and an inspection rating system (LAC 67 rev3) benchmarking mechanisms and audit protocols and to activate the electronic links themselves. There continues to be some uncertainty in respect of the outcomes of the Local Better Regulation Office (and the influence of the Audit Commission as "gatekeeper" for the "inspection" of LA Services generally, as will be proposed in the forthcoming LG White Paper) and we will need to continue to reflect this within the S18 standard.

11. The draft S18 Guidance is currently undergoing a discrete round of consultation including LACoRS Health and Safety Policy Forum and senior staff within HSE and this is an opportunity for HELA members to comment also.
12. An update on comments being received from the Policy Forum and HSE will be reported orally at the HELA meeting. They are generally positive especially regarding a single standard, the way it treats the two organisations in a transparent and equal way, that the format helps continue and promote the partnership and is flexible to survive foreseeable changes. Suggestions for additions/amendments include the need to underline the primacy of the HSC's Enforcement Policy Statement and ensure that the guidance is consistent with it, the need to recognise its application to the work of all HSE's directorates, some drafting suggestions to improve clarity, meaning and legality, the need to synchronise auditing and benchmarking arrangements and determine the effects of these on the organisations and suggestions for increasing the longevity of the "Sell the Story" standard.
13. Although the timetable has slipped and there is still work to be done it is the intention to complete the final modifications and arrange to publish the S18 standard as close to the original timetable as possible (see Annex 1)

ACTION

14. HELA is invited to comment on the current draft S18 standard and confirm that they wish to publish the new standard to become effective from April 2007.

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Annex 1

Stated objectives	Progress made towards achieving objectives	Remaining work and development required to achieve objectives.	What this will look like after the transition from a developing Programme to routine operation
<p>To review the policy, content, substance and weight of the current s.18 guidance and redraft it to reflect and affect the new and developing partnership.</p>	<p>Existing s.18 HSWA guidance restructured and rewritten to:</p> <ul style="list-style-type: none"> • set out what HSE and LAs should do to make adequate arrangements for enforcement; and • reflect targets, partnership, capacity, interventions, communications and new regulatory agendas <p>Discussion workshops on restructured and rewritten s.18 HSWA standard with 288 (out of total 410) LAs and a number of HSE staff. Incorporation of delegate comments (e.g. one standard for HSE/LAs and a focus on outcomes and national/local priorities).</p>	<p>Incorporate delegate comments from LA/HSE Workshops (Jan-March 06).</p>	<p>A new s.18 HSWA document that:-</p> <ul style="list-style-type: none"> • is in place and available via the Extranet. • is being implemented by LAs and HSE. • has an agreed compliance monitoring system. • encourages partnership working, greater consistency and improved health and safety outcomes. • Consistent with the bigger regulatory picture, e.g. LBRO, Hampton, LAAs, Central Local Partnership framework.
		<p>Further discussions with HSE at strategic and operational level on restructured and rewritten s.18 HSWA standard (April-June 06).</p>	
		<p>Modify the detailed guidance and develop a method to describe a model enforcing authority in the light of discussion workshop results. (April-July 06).</p>	
		<p>Gain approval for new s.18 HSWA arrangements from new LA/HSE governance bodies and agree implementation proposals.</p>	
		<p>Final consultation process in summer/autumn 2006. Implement recommendations from consultation.</p>	
		<p>Implementation of s.18 HSWA standard by HSE and LAs from suggested target date of April 2007.</p>	
		<p>Work with new and emerging regulatory frameworks, e.g. LBRO to ensure consistency and on developing compliance monitoring. (Ongoing).</p>	