

Open Government status: Open	Paper Number: H14/02
	Meeting Date: 17 January 2013
Exempt material: None	Type of Paper: Above the line

HELA

The LA National Code

A Paper by Elaine Harbour (LAU)

Cleared by Kevin Myers on 9 January 2013

Issue

1. This paper seeks HELA's views on the consultation on the LA National Code

Timing

2. For discussion at the meeting on 17 January 2013

Recommendation

3. That HELA consider the LA National Code consultative document

Background

4. The Government response to Löfstedt committed HSE to develop a binding and enforceable National Code as a means of ensuring that LA health and safety inspection and enforcement activity is consistent, proportionate and targeted at the most risky premises.
5. HSE are proposing to use Section 18 of the Health & Safety at Work etc. Act (HSWA) to deliver the policy objective for a "binding and enforceable" National Code that will cover England, Scotland and Wales. Section 18 HSWA places a duty on every LA to make adequate arrangements for enforcement in accordance with guidance issued by HSE.
6. Initial work concentrated on developing an outline framework for the Code to ensure it met the overall objective as well as the requirements for local flexibility and accountability. In outline the Code would:
 - a) Clarify the roles & responsibilities of business, regulators and professional bodies to ensure a shared understanding on the management of risk;
 - b) Outline how a risk based, modern regulator should act, with reference to the Regulators Compliance Code, Enforcement Policy Statements and incorporating the Joint HSE/LGA statement on reduced proactive inspection to ensure LA activity is targeted at the highest risks;

- c) Set standards for training and competence of LA H&S regulators linked to the authorisation and use of HSWA powers within LAs; and
 - d) Outline expectations for LA's data collection and peer review to facilitate the monitoring of compliance with the code.
7. HELA discussed the outline framework and an initial draft of the Code at its 21 June 2012 meeting (paper H13/03) and agreed that the general principles supporting each section of the Code would meet the desired requirements.

Discussion

8. The Code was developed against this outline with input from HELA members with a view to launching the consultation at the end of September 2012.
9. On 10 September 2012 the Department of Business, Innovation & Skills (BIS) announced the latest regulatory reform measures¹. The measures announced included reference to the introduction of binding new rules from April 2013 that "*will exempt hundreds of thousands of businesses from burdensome, regular health & safety inspections*". . The announcement went on to say that "*in future business will only face health and safety inspections if they are operating in higher risk areas such as construction, or if they have an incident or a track record of poor performance*".
10. Since this announcement was made we have been in discussion within Government on how the Code should reflect and deliver these expectations. Following these discussions the framework for the Code remains as HELA discussed. It is a principle based framework that recognises the respective roles of business and the regulator in the management of risk; it focuses on professionalism, and making best use of resource; and it sets out the risk based approach to be followed by LA regulators that will provide business with a consistency of approach.
11. However, to address the key concerns of Ministers to ensure lower risk premises were not inspected, and what we do if an LA failed to comply, additional aspects have been included:
- a) A list of activities and sectors for proactive inspection that is based on the national priority planning material we publish and is consistent with the principles of the Code and Governments declared policy. NB This list does not form part of the final published Code as we would intend to review and refresh this list periodically to inform LA planning;
 - b) A commitment to publish the annual LAE1 returns. As we discussed at HELA the intention is to monitor the LAE1 returns and where information (or lack of information) prompts questions HSE will work with the LA in question to assist their implementation of, and compliance with, the Code; and
 - c) A measure to allow business to challenge LA's inspection practice if it is not in accordance with the Code. We propose to use the Independent Regulatory

¹ <http://news.bis.gov.uk/Press-Releases/Government-red-tape-blitz-to-boost-business-growth-67fc9.aspx>

² to allow business to appeal if it believes that it was subject to an unjustified proactive inspection by HSE or LAs.

12. Consultation is now underway of the LA National Code and we are keen to ensure that LAs (and businesses) respond to the consultation to inform the final draft which we hope to be able to launch in Spring 2013.

Action

13. HELA members are asked to

- a) note the consultative document and its genesis; and
- b) consider their role with particular regard to:
 - i) engagement with the devolved administrations, local authority representative bodies, enforcement professionals and LAs
 - ii) promoting the consultation; and
 - iii) ensuring LA implementation and compliance

Contact

Elaine Harbour, LAU
Elaine.harbour@hse.gsi.gov.uk

² see <http://www.hse.gov.uk/contact/challenge-panella.htm>