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HELA

Section 18 – Compliance – update from HELA Task and Finish Group

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Introduction

1. The HELA meeting on the 3rd March 2008 agreed to set up a HELA Task and Finish Group to look at the issues surrounding the process of compliance monitoring. The aim of the group (see Terms of Reference attached at Annex 1) was:-

“To develop a mechanism for providing continued assurance that enforcing authorities (EAs) are making adequate arrangements for enforcement in line with the new S18 Standard”

2. The Task and Finish group has met 3 times; 2nd June 2008, 30th June 2008, and 4th August 2008, and views of the Local Authority Coordinators of Regulatory Services (LACORS) Policy Forum have been explored at their most recent meeting on the 16th September 2008.
3. A system for monitoring compliance is proposed below..

Background

4. Section 18 of the Health and Safety at Work etc Act 1974 (HSWA) puts a duty on the Health and Safety Executive (HSE) and Local Authorities (LAs) to make adequate arrangements for enforcement. The Section 18 Standard sets out the arrangements that LAs and HSE's Field Operation Directorate (FOD) should put in place to meet this duty. There is a duty to comply with the Section 18 Standard but none to follow a central auditing process. Any system for monitoring compliance would need to apply equally to FOD and LAs.
5. There is a range of views that have needed to be considered and navigated through in order to produce a system that gives sufficient assurance to HELA, the Local Government Panel (LGP) and HSE Board without being too burdensome.
6. Whilst the then Health and Safety Commission (HSC) wished to strengthen the process with external challenge and make public the findings of self assessments and peer review/audits, the LGP wanted a process that did not impose additional burdens on LAs or lead to a naming and shaming approach.
7. The recent Partnership Evaluation report suggests that LAs would want support and guidance given to poor performers (recommendation 9) rather than censure

but also reports the perception held by LA officers that 'self assessment by LAs is not a robust enough auditing mechanism to ensure good performance across the board.' Many LA practitioners would wish to see the profile of health and safety raised locally via specific audit and/or prescription from the centre. A number of HSE Inspectors commented that the lack of an effective monitoring and auditing regime reduces the benefits of partnership working and leads to frustration that not all LAs are engaged equally in the partnership.

8. However, from a Local Government perspective, in England any mandatory central auditing process would need to be supported by Comprehensive Area Assessment (CAA) and the national indicator (NI) set.
9. The Devolved Administrations have also developed their own performance frameworks for LAs. Within Wales, the performance of LAs is measured through Best Value Performance indicators that focus on inspection activity. There are 3 Welsh Performance indicators monitored by the Data Unit of the Welsh Assembly. Two of these (PPN/008 & NI17) incorporate health and safety. Within Scotland, performance of LAs will be assessed against indicators which contribute towards the Scottish Government's Strategic Objectives. LAs are not assessed explicitly in their indicators, but their work contributes to the delivery of local objectives.
10. The next opportunity to consider a more formal approach to auditing against Section 18 within CAA and the NI set, should occur in 2011 as part of the Comprehensive Spending Review. This coincides with the date by which all EAs should be complying with the S18 Standard. The period between now and 2011 provides both an opportunity to pilot the proposed approach, testing the willingness of EAs to use it, and to gather the evidence necessary to support a case for inclusion in the CAA/NI process if it was considered to be useful and beneficial.
11. In addition, the Food Standards Agency (FSA) updated the Task & Finish Group on the current review of their auditing system. They operate outside the CAA process as prescribed under Regulation (EC) No 882/2004. Competent Authorities of EU Member States (i.e. primarily LAs in the UK) are required to carry out internal audits or be subject to external audits to ensure they are achieving the objectives of the Regulation. This does not exist in Health and Safety legislation. The FSA's review of their audit scheme, is exploring a more outcome focussed and risk based approach that takes account of LAs existing systems for audit, Self Assessment and Peer Review and the CAA process.
12. LACORS and Local Government Association are eager to see no additional burdens on LAs given the National Indicator set and CAA as the means of managing performance (in England). Although many LA officers want the profile of health and safety raised locally, through central auditing, the LACORS perspective is that this is not possible in the current regulatory landscape, and that the next opportunity to reassess this is in 2011. The Local Better Regulation Office's current position is that they accept the proposed peer review and self assessment system. They also, do not want additional burdens put on LAs. However, they are likely to require some mechanism of reassurance that appropriate regulatory action is being taken by all LAs. LBRO's 'World Class' regulation initiative is likely to consider some elements of performance management/reassurance.

Proposed S18 Standard Compliance System

13. The suggested system has two main aspects to its approach – i) Self Assessment and ii) Peer Review and these are supported by Improvement Plans and Reporting Mechanisms.
14. **Self Assessment** would use a yes/no check box questionnaire against the individual elements of the S18 Standard. This would allow 4 levels of answer signifying Inadequate Arrangements (score 1); Some Deficiencies (score 2); Adequate Arrangements (score 3); and Good Practice (score 4). An EA would score itself against the individual elements of the Section 18 Standard and provide an overall Section 18 Standard score.
15. Where an EA scores less than 3 against an individual element, the expectation would be that an action is put in place to bring the score up to 3, within a specified timescale. Similarly, an action could be established to improve the performance on any score that equals 3, by introducing examples of good practice. These individual actions, either developing adequate arrangements or introducing good practice, would form the basis of an EA's **Improvement Plan**.

For example:-

Section 18 – Make it happen – “EAs shall make a clear statement, endorsed by senior management, on their commitment to improving health and safety outcomes.”

Question - What level of commitment has your EA given to improving health and safety outcomes?

Answers -
a) No commitment at any level (=1);
b) Commitment at practitioner and lower management level only (≤ 2);
c) Commitment at practitioner and lower management level and also endorsed at senior management level (e.g. FOD – Member of Management Board; LA – Director and Portfolio holder) (≤ 3); and
d) Commitment at practitioner and lower management level, endorsed at senior management level plus some recognised element of good practice (=4) e.g. commitment to outcomes reinforced in performance review process.

16. If the EA undertaking the Self Assessment answered b) then an action for its Improvement Plan could be to “Report to the Senior Management Committee seeking their endorsement to health and safety outcomes by March 2009.”
17. Ideally EAs should keep evidence of their compliance in an easily accessible form, for example, a list of relevant web links in an “electronic evidence folder” i.e. “Report to Senior Management Committee on commitment to outcomes – 15 September 2008”.
18. The Self Assessment process would be undertaken by individual LAs and FOD Field Management Units (FMUs). Much of the Self Assessment information for Field Operations Directorate (FOD) would be supplied centrally by FOD Headquarters/LAU i.e. centralised policies, practices and procedures with only

local variations (e.g. partnership working or local plans) being assessed at a local level.

19. The **Peer Review** aspect of this system is not a formal auditing approach but involves the coming together of a number of EAs to review their Self Assessment findings and their resultant Improvement Plans. For LAs and HSE this would be undertaken at a sub-regional level e.g. LA Liaison Group (LG)¹ level and FOD Divisional Management Team (DMT) level respectively. Partnership Managers (PMs) and their teams would facilitate and moderate the process within LG's and FOD, to ensure consistent standards are being achieved in different EAs. This process may need to adapt to the reorganisation currently being undertaken within Local Government. Individual EAs when brought together would:-
- study the results of the Self Assessments and Improvement Plans;
 - identify elements which require further action;
 - provide self help/advice/solutions where improvement is required;
 - share examples of local, regional and national good practice;
 - amend Improvement Plans as appropriate;
 - explore the reasons where EAs do not engage in the process;
 - suggest areas which may require additional support from the centre; and
 - agree and collate the information for reporting to LAU and HELA.
20. This general approach is aimed at sharing local, regional and national good practice, encouraging EAs that are doing well, to assist those that are doing less well and to discuss and develop Improvement Plans.
21. The scheme would operate on a three year cycle. In the first year of the scheme the Self Assessment, Peer Review and production of individual EA Improvement Plans would be handled in tandem. In the second and third years the process would only require individual EAs checking progress against their Improvement Plans. Self Assessment and Peer Review would begin again in the fourth year. There could be a rolling programme of Self Assessments and Peer Reviews with only a percentage of EAs taking part every year. See flowchart Annex 2.
22. The **Reporting Mechanisms** for this system would be as follows. Specific information contained in the Self Assessments and Improvement Plans would only need to be shared within the specific LGs and FOD DMTs. Although there is scope to trial a more formal sharing of information. Results of Self Assessments, Improvement Plans, Peer Reviews and progress against Improvement Plans would be provided to LGs and DMTs own management reporting systems e.g. parent LA, CEHO. LGs/DMTs would collate and agree their information with their PM and provide LAU with a generic report on compliance. The specifics of what this will contain is still to be decided. LAU would then provide a national picture on compliance to HELA, highlighting any local issues to that region e.g. resourcing, need for specialist help, support and advice. HELA would then report to the LGP/HSE Board as necessary.
23. The suggested timescale for piloting the proposed scheme would be to encourage a percentage of EAs, say between 10 - 30% (5 -16 LGs and 8 - 25 FODs FMUs) to undertake Self Assessments and Peer Review per year. This could start in 2009 with a small number of willing EAs testing the draft S18

¹ Liaison Groups (LGs) includes County Liaison Groups (England) Task Groups (Wales) and H&S Liaison Groups (Scotland).

toolkits when they become available and a greater number taking part in 2010 and 2011 when the system would be reviewed.

24. During this period up to 2011 it may be helpful if EAs were also able to feedback targeted information e.g. on use of the new Regulatory Development Needs Assessment (RDNA) Tool or the new Prioritised Planning system. During this time there is scope to trial a variety of formal reporting mechanisms with willing EA groups including the development of an on-line system. Further guidance will be developed to describe in more detail how the processes would operate. In addition, there is an opportunity for LAU/LACORS to explore the reasons where EAs do not engage in the process, to understand the underlying causes and find ways to support better delivery of outcomes.

25. Next Steps The Task & Finish Group need to capture the views of the Department of Communities and Local Government (CLG), Audit Commission (AC), Audit Scotland (AS) and Devolved Administrations (via COSLA and WLGA), to the monitoring system proposed. This will help decide on the path to take as we approach 2011.

Consultation

LACORS, Welsh and Scottish Representatives, FOD and LAU representatives on HELA T&F group. LBRO and FSA.

Partnership Liaison Officers at meeting on 14th August.

LACORS Policy Forum on the 16th September.

Partnership Managers meeting on 29/30 September.

Recommendations

That:

1. HELA endorse the proposed system
2. HELA agree to the HELA T&F Group further developing the system
3. HELA propose what information should be included in the reporting mechanism (para. 22) to LAU/HELA and the HSE Board/LGP.
4. HELA propose who should take work forward this work e.g. development of the self assessment tool, standard guidance for partnership managers to use as facilitators

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Annex 1

HELA Task and Finish Group - monitoring compliance with S18 Standard

Terms of Reference

Aim

To develop a mechanism for providing continued assurance to HELA, HSE & LGP that enforcing authorities are making adequate arrangements for enforcement in line with the new S18 Standard - "Making a Difference....." that takes into account current developments, advice and practice on performance frameworks.

Terms of reference

- To develop a mechanism to give continued assurance that enforcing authorities are making adequate arrangements for enforcement in line with the new S18 Standard and its supporting information.
- Take account of current developments, advice and guidance including:
 - Local Government White Paper – Strong and Prosperous Communities
 - LACORS' Peer Challenge Process and Self Assessment Framework
 - Other performance frameworks e.g. Foods Standards Agency/LBRO/HSE/LA
 - Consider national performance frameworks and indicators e.g. Comprehensive Area Assessment (CAA) and the Audit Commission
 - Any other considerations
- Consider the use of external challenge to strengthen the mechanism
- Consider the resource implications of introducing a mechanism.
- Consider how such a mechanism would be consulted upon, implemented and reported.
- To report back to HELA by October 2008 with options.

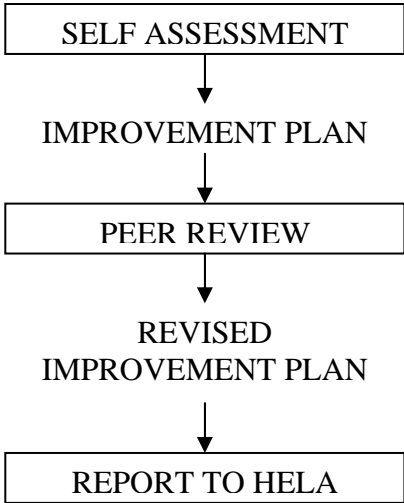
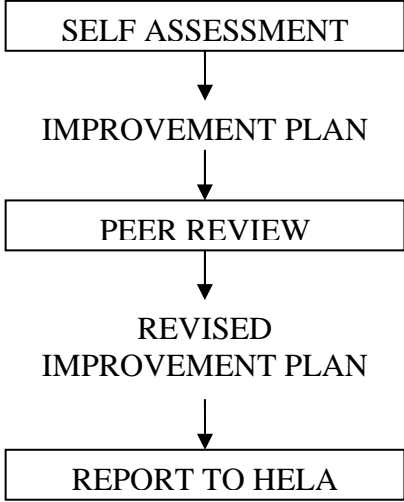
Membership

LAU, LACORS, HSE, LAs,

Consultation

LACORS Policy Forum, CIEH, FSA, LBRO, BRE

Annex 2 – Flowchart of mechanism proposed

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| <p>YEAR 1</p> |  <pre> graph TD A[SELF ASSESSMENT] --> B[IMPROVEMENT PLAN] B --> C[PEER REVIEW] C --> D[REVISED IMPROVEMENT PLAN] D --> E[REPORT TO HELA] </pre> | <p>START 2009 10% 5 x LGs 8 x FMUs</p> <p>COVERING SIMILAR ADMINISTRATIVE BORDERS</p> |
| <p>YEAR 2</p> | <p>CHECK PROGRESS AGAINST IMPROVEMENT PLAN AND AMEND AS NECESSARY</p> | <p>2010 30% 16 x LGs 25 x FMUs</p> |
| <p>YEAR 3</p> | <p>AS ABOVE</p> | <p>2011 16 x LGs 25 x FMUs</p> |
| <p>YEAR 4</p> |  <pre> graph TD A[SELF ASSESSMENT] --> B[IMPROVEMENT PLAN] B --> C[PEER REVIEW] C --> D[REVISED IMPROVEMENT PLAN] D --> E[REPORT TO HELA] </pre> | <p>2012</p> |