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## HELA

### Delivering the recommendations in the Lofstedt report & the Government response

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**Cleared by Elaine Harbour on 20 January 2012**

#### Issue

1. This paper seeks views on HELA's role in delivering the recommendations in the Lofstedt report and the Government response

#### Timing

2. For discussion at the meeting on 30 January 2012.

#### Recommendation

3. That HELA considers their role in delivering the recommendations.

#### Background

4. In November 2011 the Lofstedt report<sup>1</sup> was published alongside the Government response<sup>2</sup>. The Lofstedt report contains the recommendation "*that legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces*".
5. The Government response confirms that it fully supports the objective of this recommendation, whilst recognising that "*At the same time, in our effort to address the deficiencies in the system we must not create an even more centralised approach that is further removed from local business and communities. There remains an important role for local inspectors to use their knowledge and experience to engage with local businesses across a range of regulatory issues*".
6. The overall objective may be summarised as strengthening HSE's policy role for all aspects of health and safety enforcement to deliver better targeted inspections and

<sup>1</sup> [www.dwp.gov.uk/docs/lofstedt-report.pdf](http://www.dwp.gov.uk/docs/lofstedt-report.pdf)

<sup>2</sup> [www.dwp.gov.uk/docs/lofstedt-report-response.pdf](http://www.dwp.gov.uk/docs/lofstedt-report-response.pdf)

deliver greater consistency for business; broken down in the Government response as follows:

- a) That HSE will work with local government and business to develop a shared national code that is binding and enforceable;
- b) To work with local government to improve the quality of training and dispel myths and the fear of litigation that can result in councils being over cautious with their inspections, and
- c) For HSE to work closely with the Local Better Regulation Office (LBRO) who operate the Primary Authority (PA) Scheme, to ensure that PA can help deliver the reduction in burdens and increased consistency of approach in line with HSE policy.

7. HSE has historically worked with Local Authority (LA) Health & Safety (H&S) co-regulators to produce guidance material with an aim of providing advice and promoting regulatory consistency. In 2002 Health and Safety Commission (HSC) Guidance to LAs was issued under Section 18 of the Health & Safety at Work etc Act 1974 (HSWA). This was revised as the "Section 18 Standard" in 2008 to provide a set of shared principles for LAs and HSE's Field Operations Directorate<sup>3</sup>. In support of this, a detailed toolkit, self assessment and peer review process was produced<sup>4</sup>. Progress in implementing the standard was reported to HELA in July 2011<sup>5</sup>.
8. More recently HSE worked with the Local Government Regulation prior to their demise to develop guidance on how to better prioritise local authority inspection. The "*Joint statement for reduced proactive inspections*" was published in May 2011 and is drafted in such a way that within the policy framework it provided flexibility for LAs to continue to deliver health and safety using local knowledge and intelligence as well as national intelligence and information provided by HSE<sup>6</sup>. The joint statement is underpinned by a revised Local Authority Circular (LAC 67/2) "*Advice/Guidance to Local Authorities on Targeting Interventions*"<sup>7</sup> which was developed with the LA H&S Practitioner Forum, subject to wide consultation and published 29<sup>th</sup> November 2011.
9. To assess LA progress in responding to the Government's reforms HSE recently commissioned an in-year data collection and data sampling exercise in addition to the usual annual LAE 1 return. The latest annual LAE1 data collection shows a 12% drop in LA inspection figures for 2010/11 against 2009/10. The additional in-year data collection, when statistically modelled, suggested an anticipated 28% drop in inspection numbers for 2011/12. However, the data sampling exercise suggested that health and safety inspections have not been targeted in accordance with the joint guidance and there remains a significant level of inspections made to lower risk premises (i.e. category B and category C premises).

## Argument

### **Strengthening HSE policy role for all aspects of health & safety enforcement**

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<sup>3</sup> [www.hse.gov.uk/section18/s18.pdf](http://www.hse.gov.uk/section18/s18.pdf)

<sup>4</sup> [www.hse.gov.uk/section18/toolkit.htm](http://www.hse.gov.uk/section18/toolkit.htm)

<sup>5</sup> [www.hse.gov.uk/aboutus/meetings/committees/hela/040711/h11-06.pdf](http://www.hse.gov.uk/aboutus/meetings/committees/hela/040711/h11-06.pdf)

<sup>6</sup> [www.hse.gov.uk/lau/pdfs/reduced-proactive-inspections.pdf](http://www.hse.gov.uk/lau/pdfs/reduced-proactive-inspections.pdf)

<sup>7</sup> [www.hse.gov.uk/lau/lacs/67-2.htm](http://www.hse.gov.uk/lau/lacs/67-2.htm)

10. Strengthening HSE's policy role as outlined in paragraph 6 provides the opportunity to build on existing good practice and revisit existing guidance to ensure it reflects the new political and economic environment.

#### Developing a national code

11. HSE propose to use Section 18 of the Health & Safety at Work etc Act 1974 to deliver the requirement for a "binding and enforceable" national code that covers England, Scotland and Wales.
12. Section 18(4) HSWA creates a duty on LAs:
  - a) To make adequate arrangements for the enforcement within their area of the relevant statutory provisions for which they have enforcement responsibility, and
  - b) To perform the duty in (a) and any other function conferred on them by H&S legislation in accordance with such guidance as HSE gives.
13. HSE proposes to revisit the existing S18 standard and in doing so incorporate the Joint HSE/LGA guidance on reduced proactive inspections which will have the effect of placing it on a statutory (mandatory) footing.
14. The outline timetable proposed is for HSE to engage with local government representative bodies and enforcement professionals in the development of a national code with wide consultation (to include businesses) proposed for September 2012. A formal launch date of April 2013 is proposed.

#### Data collection

15. In order to determine whether LAs are compliant with the national code HSE proposes, inter alia, to use inspection data to monitor progress. Formalising the current voluntary approach to data collection (via the LAE1 return) under a national code would support consistent national data collection from all LAs. It would allow the monitoring of progress in implementing/delivering the code.
16. Whilst the current voluntary return has achieved good response rates, indications are that the response rate is dropping. Response rates have reduced by 4.7% over the last two years and approximately 20 LAs failing to complete a return at least three times in the last five years. An additional benefit in formalising the return is that it ensures it is included in the Department for Community and Local Government (DCLG) list of required data collections for LAs to complete.

#### Challenge panels

17. Two panels are proposed to meet the Government commitment to provide an additional challenge mechanism for cases of incorrect over-application of health and safety legislation as well as dispelling the myths and challenging health and safety culture and behaviours:

- a) An Independent Regulator Challenge Panel<sup>8</sup> was launched on 5 January 2012 to look into issues where it is believed an HSE or local authority H&S inspector has given advice considered to be incorrect or disproportionate. The panel consists of independent members with the necessary competence and experience to assess advice that has been given on regulatory matters. Any complaint should be raised locally in the first instance and should only be referred to the panel if local resolution has not been possible. The panel will not look at issues where other independent appeals processes exist, as for example with enforcement notices or prosecutions; and
- b) A second panel to deal with more general advice is under consideration for launch in summer 2012. Its aim will be to provide a mechanism for those who wish to challenge claims about health and safety requirements made by non regulators (e.g. other regulatory professionals, insurance advisers etc.).

### Primary Authority

18. The Primary Authority (PA) Scheme is recognised as providing a framework for addressing inconsistencies across LA boundaries. In Common Sense, Common Safety, Lord Young noted that the large multi-site retailers felt the scheme could be improved, particularly by strengthening Inspection Plans and providing an “enhanced” role for HSE to bring our experience of working with large multi-site businesses to the scheme. As part of this HSE has been developing a Retail Sector Strategy to inform Primary Authority Inspection plans
19. There has been recent consultation<sup>9</sup> to address the concerns raised and HSE will continue to work with the LBRO and its replacement, the Better Regulation Delivery Officer (BRDO) in taking these improvements further.

### **Action**

20. HELA members are asked to:
  - a) consider the outline proposals in paras 11 – 19; and
  - b) consider their role with particular regard to:
    - i) Delivering the recommendations;
    - ii) Engagement with the devolved administrations, local authority representative bodies, enforcement professionals and LAs;
    - iii) Promoting any pre-consultation and consultation activity.

### **Consultation**

21. FOD HQ, LGA

### **Contact**

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<sup>8</sup> <http://www.hse.gov.uk/contact/challenge-panel.htm>.

<sup>9</sup> <http://www.bis.gov.uk/policies/bre/improving-regulatory-delivery/consultation-enforcement-strategy>

