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HEALTH AND SAFETY COMMISSION

Progress Report from the Enforcement Strategic Enabling Programme A paper by Eddie Bailey and Laurence Monaghan

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Issue

1. Progress report on the work of the HSE/LA Enforcement Strategic Enabling Programme (StEP).

Timing

2. Routine.

Recommendation

3. That the Commission notes:

- the progress made by the Enforcement StEP to deliver its programme of work; and
- that outline information on the enforcement statistics for 2005/06 (due to be published in November) will be available for discussion at this meeting.

Background

4. The Enforcement StEP was fully established in Autumn 2005. Its primary aim is to develop proposals to make best use of formal enforcement in delivery of health and safety priorities. The context for the StEP was a desire by the HSE Board to be satisfied that the resources devoted to enforcement were being used to best effect and were consistently following the Commission's Enforcement Policy Statement (EPS) in a period where the enforcement statistics have been showing a downward trend over the past few years. To tackle this task, the Programme has taken forward a number of interconnecting workstreams, overseen by a Programme Board, as explained in the High Level Plan at Annex 1.

5. The focus of this paper is to update the Commission on the principal workstreams for enabling HSE and LAs to achieve: consistent enforcement decision making in line with the Commission's EPS; appropriate, efficient and effective use of investigation and enforcement resource; alignment of enforcement behind strategic programmes; optimal use of enforcement communications; alignment of HSE and LA enforcement activity.

Argument

Research

6. Through this workstream the Programme has collated a sizeable body of evidence on which it has based its recommendations. It has analysed evidence from a number of sources, conducted a review of literature and has taken account of the different legal systems of England & Wales and Scotland. Evidence examined included FOCUS data, interviews with HSE and LA inspectors, and the findings of the Regulatory Decision Making Audit (RDMA), which examined the enforcement decisions made in a sample of HSE and LA investigations.

7. The findings from the literature review indicated that formal enforcement is an important element in promoting and securing compliance, and suggested that formal enforcement works best as part of a mix of interventions alongside inspection and raising awareness through education and publicity. Our research with HSE and LA staff identified the significant role behaviour and culture had in enforcement delivery and our analysis of performance identified areas where improvements in the efficiency, effectiveness and consistency of delivery could be made. There is consistent evidence from a number of sources that HSE is not over-zealous in its enforcement activities.

Improving the efficiency and effectiveness of investigation and prosecution activities

8. This workstream focuses on improving the delivery of HSE's and LAs' investigation and enforcement activity to ensure it is used appropriately, efficiently and effectively. From the conclusions of its analysis the Programme team has developed recommendations, measures and products to drive improvement in a number of areas. The substantial majority of HSE's investigation and enforcement activity is undertaken by Field Operations Directorate (FOD) and our recommendations have been developed for initial application within FOD.

Improving the consistency of enforcement decisions through strong leadership

9. The CE and DCE (Ops) have issued a joint communiqué to all staff setting out their expectations: on the use of enforcement in driving up standards; and that enforcement decisions are made within the framework of the Commission's Enforcement Policy Statement (EPS). This communiqué was supported by messages from operational directors to their staff, setting out their expectations. Operational managers have resolved to demonstrate leadership on these issues, and will be supported by regular on-going internal communications.

Improving investigation and enforcement delivery

10. The Programme's view has been that effective performance management is key to securing sustainable improvement in investigation and enforcement delivery. The Management Board of FOD agreed this approach and the Programme's recommendations for management action supported by a package of continuous improvement measures. FOD operational managers are rising to the challenge of

implementing these actions and at their forum in October will be sharing their performance management experiences. The next phase of the Programme will capture lessons learnt and good practice identified for sharing within HSE and with LAs

Improving the planning, monitoring and reporting of investigations

11. It has been agreed that within FOD, managers will take a more active role in investigation delivery by planning, managing and scrutinsing all investigations. Before an incident is confirmed for investigation, the purpose(s) for selecting it; an outcome expectation (including enforcement); and a resourcing plan and timetable are to be set down. Investigations will then be managed against these elements and concluded early if achieving the expected outcomes looks unrealistic. A redesigned report template will support the reporting and monitoring of investigations and a system of performance indicators for investigations and enforcement activity has been developed to assist in the management of delivery.

Major Hazards

12. As the majority of HSE's enforcement is taken by FOD, the Programme has focused its recommendations on that Directorate. However, work has now started to:

- ensure the HSE directorates covering the major hazards sectors continue to be positioned to meet the expectations articulated in the recent enforcement communiqués (paragraph 9);
- articulate how dealings with dutyholders within the permissioning regimes are consistent with the principles of the EPS and the framework of the EMM;
- consider the role of enforcement in supporting delivery of the Major Hazards Programmes and PSA2; and
- consider the Enforcement Programme's emerging proposals from other workstreams and ensure their appropriate application and effective implementation in HSE's major hazards directorates.

Enforcement supporting delivery of Fit3

13. This workstream was established to explore the ways in which formal enforcement activity should support delivery of the Fit3 Strategic Programme and provide direction in preventive enforcement work. Considerable progress has been made to embed the role of preventive enforcement into Fit3 planning and delivery. The Programme team has worked with the Fit3 Programmes to:

- ensure that strong messages on the role of preventive enforcement in Fit3 have been communicated to, and understood by operational field staff (including LAs), primarily through the Fit3 Roadshows;
- support Fit3 Programme planners as they actively incorporate enforcement expectations into programme plans;
- provide inspectors with operational guidance that includes enforcement expectations;

- assist with the re-launch of the inspection topic packs to maintain momentum; and
- develop best practice models for taking proactive pre-harm prosecutions, for example in falls and slips in the food processing sector and in the duty to manage asbestos.

14. The successful delivery of some Fit3 programme plans is highly dependent on a significant contribution from LAs. LAs have attended the Fit3 Roadshows and internal HSE guidance is being translated into the appropriate LA format. Taken together with the proposals from the efficiency workstream, it is reasonable to assume that Fit3-directed inspection will lead to an increased level of preventive formal enforcement activity, including prosecutions. However, there remain considerable challenges around the extent to which enforcing authorities have the requisite intelligence capability to target poor performers effectively.

'Rogue' traders

15. An additional workstream has been to consider the extent to which HSE and LAs should target their enforcement activity at "rogue" businesses. This was in response to recommendations in the Hampton report that more should be done to enforce against those businesses that seek a competitive advantage by flouting regulatory compliance requirements.

16. The Enforcement StEP Board concluded that this was a difficult area in health and safety terms and that enforcing authorities should take a risk-based, proportionate approach that did not deflect scarce resource away from delivering our health and safety priorities. It was agreed, however, that more could be done to build on successful pilots on sharing information and case studies on potential "rogue" businesses to improve intelligence capabilities. To that end, HSE intends to host a workshop, to which the Environment Agency and LA representatives will be invited to discuss experiences and explore the scope for further joint working on this issue.

Communications

17. The role of communications is key. By this we mean:

- the correct positioning of enforcement in the mix of interventions;
- providing better information about our enforcement role so countering mixed messages of its role to both internal and external audiences;
- seeking to build and sustain a ripple effect from our health and safety enforcement activity;
- and sharing best practice, both internally and with LA inspectors.

18. To meet these objectives, the Enforcement StEP has been:

- working with Fit3 to ensure that strategic enforcement messages are integrated into Fit3 communications plans;
- ensuring that messages about the important role of enforcement are contained appropriately in speeches by the Minister and officials;
- running journal articles based around enforcement;
- monitoring and including appropriate enforcement messages in HSE press releases with a view to being more proactive in this area;
- redesigning the HSE enforcement web micro-site and internet page to ensure they are more accessible; and
- initiating the development of an electronic-based community of inspectors – open to both HSE and LA inspectors - to enable them to share best practice.

Local Authorities

19. In taking forward its work, the Enforcement StEP has involved LA representatives in its deliberations. This has been essential to be sure that the recommendations emerging from the StEP to improve the enforcement function can be applied by LAs, recognising that the environment in which they operate is different from that in HSE.

20. A paper has been put to the October meeting of the LACORS Policy Forum setting out a number of recommendations for it to consider, drawing on the work carried out in HSE spelt out in the above paragraphs. The Forum is also considering at the October meeting a paper setting out a revised Standard that Enforcing Authorities are required by the HSC to meet in order to comply with their legal duties under the HSW etc Act 1974. The recommendations from the Enforcement StEP are therefore linked to the revised Standard.

Evaluation of HSC's Enforcement Policy Statement

21. Commissioners will see from the graphic in annex 1 that the work of the Enforcement StEP is bounded by HSC's Enforcement Policy Statement (EPS) and will recall that in November 2003 they commissioned an evaluation of the EPS to ensure its continuing fitness-for-purpose. We will be returning to the Commission in December with the results from the evaluation.

Statistics on formal enforcement activity

22. Statistics providing information on the level and type of enforcement activity undertaken by HSE during 2005/06 are due to be published as part of *Health and Safety Statistics* in November, prior to the inaugural Performance Report later that month (which will include comment on the role and value enforcement plays in driving up health and safety standards). There will be no separate Offences and Penalties Report, although the usual breakdown figures will be available on HSE's website. The Commission will receive copies of these reports. We will update the Commission further on issues relating to the 2005/06 enforcement statistics at this meeting.

Taking the work forward

23. The governance arrangements for the Enforcement StEP will be altering this Autumn as the Programme enters its second phase – Benefits Realisation – in facilitating the implementation of its recommendations from phase 1, to be finalised and agreed in October. A new, smaller Programme Board will be established to oversee this process.

24. A key issue for the future is to sustain and build on the work initiated by the Enforcement STEP, particularly in ensuring continuous improvement in the active management of enforcement activities. In addition, phase 2 will co-ordinate contributions on enforcement to the Health and Safety Statistics and Performance Report publications; oversee the impact of the performance management arrangements and communications issues described above; and take forward conclusions and recommendations from the evaluation of the EPS.

Financial implications

25. The work to improve the targeting and consistency of enforcement is anticipated to lead to an increase in the level of enforcement arising from both proactive and reactive interventions. This will be delivered from within current enforcement resource levels through the performance improvement and management measures described above. The staffing costs of the Programme to date are in the region of £600K (including work on research and communications).

Presentational issues

26. Related to handling of the enforcement statistics which will be covered further at the meeting.

Consultation

27. Within HSE, including the TU side, which has voiced its support for the aims of the Programme.

Action

28. As per paragraph 3.

The Enforcement Programme – High Level Plan

Background and Purpose:

The Health and Safety Commission's (HSC's) Strategy sets the framework for energising Great Britain's approach to improving workplace health and safety for the future. The emphasis is on preventing harm in a developing health and safety culture, which is in-tune with the modern world of work. The Strategy recognises that the Health and Safety Executive (HSE) and local authorities (LAs) need to continue, where appropriate, to take proportionate enforcement, targeting finite resources where they can have most impact.

This is because we know that firm, properly targeted and proportionate enforcement underpins the actions HSE and LAs need to take to deliver the Strategy; and that formal enforcement action amplifies all that is done to bring about sustainable, long-term reduction in occupational injury and ill-health. This Programme builds on this knowledge and will make recommendations about the use of formal enforcement activities¹ by HSE and LAs in accordance with HSC's Enforcement Policy Statement and within the frameworks of modern regulation and sensible risk management.

Aims:

This Programme will examine HSE's and LAs' formal enforcement activities and make recommendations that will better enable HSE and LAs to:

- where appropriate, use these activities to support delivery of the targets to reduce occupational injury, ill-health and days lost through work;
- undertake prosecutions and conduct the associated investigation work more effectively and efficiently;
- determine whether more should be done to target and enforce against those who deliberately flout the law and put others at risk for financial gain;
- optimise and sustain, through communications, the ripple and deterrent effect of these activities.

Framework:

The Programme is guided by the objectives of the Health and Safety at Work etc. Act 1974; the HSC's Strategy and Enforcement Policy Statement; the Criminal Justice Systems in England/Wales and Scotland; and the Government's commitment to *better regulation*. The Programme's products will be delivered through eight interrelating workstreams as set out below.

Benefits:

Implementation of the Programme's proposals will contribute to:

- the Government's commitment to effective inspection and enforcement;
- delivery of the targets for reducing occupational injury, ill-health and days lost through work;

- HSE’s and LAs’ continuing commitment to provide justice for those harmed by work;
- maintaining a credible level of formal enforcement activity;
- maintaining the deterrent effect; and
- demonstrating that public money is being appropriately used to protect against work-related risk.

Governance:

The Programme’s sponsor is Geoffrey Podger, Chief Executive of HSE. A Programme Board, chaired by Sandra Caldwell, HSE’s Director of Field Operations, as Programme Director and Senior Responsible Officer, oversees the work of the Programme. Senior people from LAs, HSE, LACoRS (Local Authorities Co-ordinators of Regulatory Services) and the Environment Agency sit on the Programme Board.

Eight interconnecting Workstreams:

Evaluation and Review of EPS		Evaluation and Review of EPS				
EPS	Local Authorities Local Authorities Local Authorities					EPS
EPS	Fit 3	Efficient and Effective	“Rogues”	Communications	Major Hazards	EPS
EPS	Research Research Research Research Research					EPS
	Scotland Scotland Scotland Scotland					
Evaluation and Review of EPS		Evaluation and Review of EPS				

Four central workstreams:

Four central workstreams flow from the Programme’s aims:

“**Fit 3**” - enabling formal enforcement activities to be better aligned to support delivery of the “Fit 3” programmes²;

“**Effective and efficient**” - recommending how HSE’s and LAs’ investigation and prosecution activities could be made more appropriate, efficient and effective;

“**Rogue traders**” - recommending whether further action is necessary to target and enforce against those who deliberately flout the law and put others at risk for financial gain, as part of the Government’s commitment to *better regulation*; and

“**Communications**” - producing and implementing an Enforcement Communications

Strategy because we recognise that isolated formal enforcement action will not provide a sufficient impetus to drive up standards. Our communications strategy will, among other things, look at how we can make better use of publicity and other communications, to provide and promote a ripple and deterrent effect from our enforcement efforts.

Enforcement Policy Statement:

All the workstreams feed into and are bound by the workstream “**EPS**” on review and evaluation of the HSC’s Enforcement Policy Statement (EPS).

Local Authorities:

A separate workstream has made and maintained arrangements to involve LAs in development of the Programme, and ensure that the Programme’s recommendations are relevant and workable for local authorities. **However**, we will not report separately on this workstream but integrate reporting into the four central workstreams.

Research:

The Programme is underpinned by “**Research**” - supporting all the Programme’s recommendations and other workstreams with evidence from research and learning from others.

Major Hazards:

The white column in the table represents the “**Major Hazards**”³ workstream in which we will ensure that the relevant Programme proposals fit with HSE’s work to control Major Hazards.

Scotland:

Within each of the workstreams we will ensure that the Programme’s recommendations are relevant and applicable within the judicial systems in England/Wales and Scotland.

Footnote: 1. Formal enforcement activities are defined as: prosecution; Crown censure; service of Notices (Prohibition, Improvement and Crown); withdrawal of licences outside the major hazards sectors, for example, under the Asbestos Licensing Regulations; formal cautions; and new types of penalties, such as administrative fines and restorative justice, as these become available.
2. “Fit 3” refers to HSE’s strategic programme, “fit for work, fit for life, fit for tomorrow”, to deliver that part of HSE’s Public Service agreement (PSA) on reducing work-related ill-health, injury and time lost.
3. “Major Hazards” reference to Major Hazards Strategic Programme 2005 to 2008, which encompasses activity within HSE’s Nuclear Safety Directorate and Hazardous Installation Directorate to reduce the likelihood of catastrophic incidents in the major hazard industries they regulate.