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HEALTH AND SAFETY EXECUTIVE

The HSE Board

Revised guidance to enforcing authorities under s18

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Issue

1. HSC's guidance to enforcing authorities on "making adequate arrangements for enforcement" under Section 18 of the Health and Safety at Work Act (S18 Standard) is now at the stage where it needs to receive the approval of the HSE Board and the HSC.
2. A paper copy of the draft S18 Standard (which is intended to be an electronic document) is attached at Appendix 1. The roll-out and communications plan – under the partnership banner – is at Appendix 2.

Timing

3. The standard has been subject to extensive consultation over the past two years, and reflects the various comments and inputs made during that time. All parties are now content, including the LACoRS Board. The final elements in the process are the agreement of the HSE Board, and HSC. It is intended that the draft S18 Standard will go to HSC in February 2008 with publication in April 2008.

Recommendation

4. The HSE Board is invited to endorse and approve the draft S18 Standard.

Background

5. The LA and HSE Working Together programme included a review of the existing S18 guidance to support the new partnership, encourage the best use of joint resources, promote consistent enforcement and address other emerging issues such as the better regulation agenda.
6. HSE and LAs both have a duty to 'make adequate arrangements for enforcement' under Section 18 of Health & Safety at Work etc Act 1974 (HSWA). HSWA requires LAs to perform this duty in accordance with guidance from Health and Safety Commission (HSC). HSWA also allows the HSC to issue directions to HSE to comply with similar guidance under S11 (4) (b). The document that sets out what "adequate arrangements" mean in practice is referred to within the rest of this paper as the S18 Standard.
7. Work on the Standard has been undertaken as an important underpinning element of the HSE/LA partnership arrangements. It recognises that the partnership is founded on equivalent treatment of HSE and LAs as the Commission's enforcing authorities. It has therefore been written to apply to LAs and those parts of HSE that have an equivalent function i.e. Field Operations Directorate (FOD), whilst recognising their differences. The

Standard supports, and is consistent with, the standards set down by Senior Labour Inspectors' Committee (SLIC) in the Common Principles for Labour Inspection in EU Member States. The Standard will not apply to the Nuclear or Hazardous Installations Directorates.

8. The S18 Standard would set out HSC's requirements to HSE and LAs to comply with their duty to make 'adequate arrangements for enforcement'. It would act as both a HSC direction to HSE under S11(4)(b) and as HSC guidance to LAs under S18(4)(b). Following the merger of HSC and HSE, under the transitional provisions guidance issued by the HSC will continue in effect in relation to LAs as though issued by the new Executive. Arrangements will be put in place to ensure that the Executive's actions in this area continue to be governed by the Standard.
9. The new S18 Standard is based upon current HSE FOD and LA good practice and therefore HSE FOD and well organised and resourced LAs are already complying with it. It is designed to be an electronic document with active links to supporting information that can be updated as required.
10. The S18 Standard has the title "Making a Difference..." and consists of an Introduction, a broad set of principles under the headings of "Make it Happen..." "Do It Right..." "Work In Partnership" and "Sell the Story..." to reflect the need for the effective systems and infrastructures, consistent enforcement processes, to make the best use of joint resources and the need to promote sensible risk management respectively. Each principle is then further broken down to describe what these mean in detail. Electronic links then provide access to other supporting material including toolkits, assessment framework, links to other documents etc.

Argument

11. There will be little impact of the S18 Standard on HSE or FOD. FOD's Heads of Operations Procedures and Practices Group did not foresee problems for FOD in meeting the elements of the S18 Standard - a view confirmed when tested within FOD, and most recently endorsed by the FOD MB.
12. Notwithstanding this the suggested timetable for complying with the S18 Standard is March 2011. LAs will not be expected to fully comply with the S18 Standard immediately. The reason for this is that not all the supporting material is available and LAs will need time to embed some of the elements of the S18 Standard within their organisations e.g. common competency framework. The full implementation of the S18 Standard is planned to be completed by March 2011. This timetable will apply to all EAs including FOD.
13. It is intended that compliance against the S18 Standard will be initially monitored through a system based on self assessment and later some sample auditing to test the robustness of the self assessments using peer challenge. This is a model that is increasingly being proposed for use in Local Government to reduce the burdens of auditing and is being developed by LACoRS amongst others. Auditing compliance using self assessment and peer challenge should be a relatively easy task for HSE as most of the evidence on compliance is held centrally and available through FOD HQ. Divisions will only need to add relevant local evidence where necessary and then only on a sample basis e.g. to confirm that local

objectives are considered in delivery plans/partnership team plans. It would be an appropriate reflection of the partnership to involve LACoRS in the FOD assessment process.

14. Whilst the S18 Standard is based on current HSE, FOD and LA good practice, and therefore the resource implications for FOD should be minimal, there is a need to communicate and explain the proposed new Standard, and how it will be used, within FOD and HSE generally.
15. The S18 Standard has been tested in a “shadow” exercise in both FOD and LAs. There are however a still a number of other pieces of work underway that will complete the suite of guidance supporting the Standard. Although not essential for publishing they provide supporting information that will help EAs meet their duty to make adequate arrangements. These include proposed changes to reporting arrangements; proposals to develop the LA prioritised planning mechanism; the development of the detail behind the Common Competency Framework; the requirements in the Regulatory Enforcement & Sanctions Bill on Primary Authority Principle and alternative sanctions; and the role of LBRO. On the last point, publication of the Standard will put us in a strong position to influence LBRO in relation to its interests in LA performance.
16. The final amendments to the Standard and its website format are currently being made although the supporting material as outlined in the paragraph above will only come on stream during 2008/09.
17. Communicating the Standard within HSE FOD and LAs is an important component of the work and a Project and Communications Plan (see Appendix 2) has been developed (see para 23 below).

Consultation

18. As part of the S18 Standard’s development a series of 10 GB-wide consultation workshops were held in 2005 and attended by a total of 551 LA and HSE delegates. The workshops were reported to the meeting of the Health and Safety Commission and Local Government Panel (LGP) in 2006.
19. Following a widespread consultation exercise within HSE and with LACoRS Policy Forum during autumn 2006 HELA agreed to “shadow run” the draft S18 Standard between March and September 2007 and to publish the finalised document in April 2008. Shadow running involved a number of LAs being used to test whether they met the elements within the draft Standard and a similar but simpler exercise was undertaken by parts of FOD. Generally the majority of the LAs met the main elements of the draft S18 Standard although there were a significant number who felt that they did not fully meet all the aspects. In FOD, identifying evidence of compliance was relatively straightforward and where potential deficiencies were noted (for example on targeting) it was acknowledged that further work was underway to address this.
20. The LACoRS Board, at its meeting on the 7th December gave its support to the revised arrangements and the LACoRS’ Chairman will be writing to HSC's Chair to confirm this in due course.

21. FOD MB received a report on the Draft S18 Standard on 11th December 2008 and had no further comments.

Presentation

22. Communicating the Standard within FOD and LAs is an important component of the work and a Project and Communications Plan (see Appendix 2) has been developed. This sets out key people to brief including Heads of Operations, FOD Teams, Enforcement Liaison Officers and Partnership Teams as well as the wider LA community via LACoRs, CEHO Groups, Regional Partnership Forums and County Liaison Groups. This communication will be undertaken by a variety of means including briefing notes, meetings, articles and use a variety of media for example written correspondence, professional and in-house magazines, websites etc.

Financial/Resource Implications for HSE

23. The S18 Standard is based on current HSE, FOD and LA good practice and the resource implications for FOD in complying with the Standard will be small.
24. There will be an expectation on all Enforcing Authorities, FOD and LAs, to comply with S18 Standard within a 3 year timetable and provide evidence of compliance using a process of self assessment and peer challenge. This is a model that is increasingly being proposed for use in Local Government to reduce the burdens of auditing and is being developed by LACoRS amongst others. Currently LAs are expected to undertake an audit of their management of health and safety enforcement against S18 Guidance every 5 years and it is intended to maintain this level of frequency for all EAs although the use of self assessment will make the process simpler.
25. An assessment of FOD against the S18 Standard would consist of three elements. A centralised mapping of existing supporting evidence e.g. FOD Summary Delivery Plan; HR's Managing Performance information etc. This will be undertaken by LAU. This exercise will also pick up on other relevant information from other programmes and initiatives e.g. enforcement programme, regulatory decision making assessments and other management information findings. The second element, to confirm the assumption that centralised systems operate at Divisional level, would consist of a sample self assessment against a checklist within Divisions e.g. to confirm that Divisional Business Delivery Plans have taken note of local objectives. Any gaps that these two elements highlight would need an action plan to be put in place to correct any deficiencies. The third element will be a peer challenge to review whether the process is robust and effective using LACoRS as an external critical friend.
26. There is a need to communicate the proposed new Standard within FOD and HSE generally. This is part of the overall S18 project and will be delivered using normal communication routes for example planned meetings of HoOPS, PMs and Divisional meetings to deliver appropriate information and articles in HSE media including LAU newsletter, HSE/HELEX websites etc.

27. The total costs for undertaking a 1 in 5 year assessment of compliance, are £5000. These have been agreed with PFPD.

Action

28. The HSE Board is invited to endorse the S18 Standard.

Appendix 1 – 18 Standard

Health and Safety Commission



This appendix is closed – Section 22 exemption, information intended for future publication

Appendix 2

Draft Project Plan/Communication Plan

Context

1. 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. It also requires LAs to perform this duty in accordance with such guidance as the HSC may give them. This guidance is commonly known as “S 18 Guidance” and has been the primary means for HSC to describe what constitutes LA’s adequate arrangements for enforcement. In addition HSE is required to give effect to any direction given to it by the HSC under Section 11 (4) (b) HSWA.
2. The HSC/E and LAs have recognised that it was necessary to examine and adapt as necessary the frameworks which currently underpin the relationship between HSC, HSE and LAs and to properly reflect the status of HSE and LAs as partners. To help achieve this S18 Guidance has been re-branded as a Standard and re-drafted so that it applies to LAs and HSE’s FOD. It is also designed to support the developing partnership, address an emerging range of issues e.g. the Hampton Review, the Local Better Regulation Office, best use of joint resources and the equivalent status of LAs and HSE, etc. and be flexible enough to respond to future change.
3. The latest version of the S18 Standard is a result of various LA and HSE consultations. It is intended to be a living electronic document accessed via HELEX with active links to other supporting information e.g. tool kits, useful documents and other supporting material. Some of this supporting material is still in development e.g. the common competency framework.
4. The Standard is to be published by April 2008. The aim is for all enforcing authorities to make adequate arrangements for enforcement as defined by the Standard by the end of 2011.
5. This project /communication plan sets out the key tasks and timings to:
 - to ensure the Standard is shared with appropriate target audiences on a timely basis and by the most effective means, using clear and consistent language and terms.
 - ensure the Standard continues to be developed in a coordinated way;
 - persuade the various target audiences of the need to comply with the common Standard
6. The table below sets out the target groups for this plan and the key messages for each group.

Target Audience:	FOD MB
Want them to:	<ul style="list-style-type: none"> ▪ support the proposal for the Standard ▪ recognise the relevance and benefit of this work to FOD, LAs and the wider HSE/LA Partnership
How and When:	<ul style="list-style-type: none"> ▪ paper to FOD MB 10/12/07 ▪ report on progress 01/04/09
Key messages:	
<ul style="list-style-type: none"> ▪ that the Standard applies to LAs/FOD ▪ key points of Standard ▪ the process ▪ FOD MB's role ▪ FOD role as exemplar ▪ the limited implications for FOD in terms of: <ul style="list-style-type: none"> ○ auditing compliance ○ changes to current practices ○ support needed for LAs ○ timescale for full compliance ▪ what success will look like 	
How and When:	
<ul style="list-style-type: none"> ▪ paper to FOD MB 10/12/07 ▪ report on progress 01/04/09 	
Target Audience:	HSE Board
Want them to:	<ul style="list-style-type: none"> ▪ support the proposal for the Standard ▪ recognise the relevance and benefit of this work to FOD, LAs and the wider HSE/LA Partnership
How and When:	
<ul style="list-style-type: none"> ▪ paper to HSE Board 11/01/07 ▪ report on progress 01/04/09 	
Key messages:	
<ul style="list-style-type: none"> ▪ the Board's role ▪ key points of Standard ▪ how the compliance of FOD be audited and reported 	

Target Audience:	HSC
Want them to:	<ul style="list-style-type: none"> ▪ endorse the Standard ▪ recognise the relevance and benefit of this work to FOD, LAs and the wider HSE/LA Partnership ▪ make direction to FOD under HSWA Section 11 (b) ▪ give guidance to LAs under HSWA Section 18 (x)
How and When:	
<ul style="list-style-type: none"> ▪ paper to HSC 22/02/08 ▪ report on progress 01/04/09 	
Key messages:	
<ul style="list-style-type: none"> ▪ the Commission's role ▪ key points of Standard ▪ role in delivering consistent enforcement ▪ how compliance of LAs/FOD will be audited and reported 	
Target Audience:	HELA
Want them to:	<ul style="list-style-type: none"> ▪ oversee Project and Communications Plan ▪ commend Standard to Members, CEOs, LA Senior Managers and practitioners ▪ continue to be involved in development of supporting material etc ▪ oversee monitoring of compliance and development of auditing process
How and When:	
<ul style="list-style-type: none"> ▪ project/Communications Plan to Joint Chairs and other members xx/11/07 ▪ update Paper 05/03/08 ▪ regular 6 monthly reports on progress 	
Key messages:	
<ul style="list-style-type: none"> ▪ progress to date ▪ role in delivering partnership ▪ role in delivering consistent enforcement 	
Target audience:	LACoRS Board
Want them to:	<ul style="list-style-type: none"> ▪ Endorse the Standard ▪ recognise the relevance and benefit of this work to the wider HSE/LA Partnership
How and When:	
<ul style="list-style-type: none"> ▪ reported to LACoRS' Board ?/12/07 	
Key messages:	
<ul style="list-style-type: none"> ▪ key points of Standard ▪ how it fits in to other LA agendas 	

Target Audience:	Local Government Panel
Want them to:	Be aware
How and When:	
<ul style="list-style-type: none"> below the line agenda item at their next meeting/Letter from HSC following their Feb 08 meeting 	
Key Messages:	
<ul style="list-style-type: none"> role in development of partnership working role in consistent enforcement 	
Target Audience:	LACoRS Policy Forum
Want them to:	<ul style="list-style-type: none"> support proposal take key messages back to County Liaison Groups
How and When:	
<ul style="list-style-type: none"> briefing note for Policy Forum Members report to 05/02/08 meeting of Policy Forum 	
Key messages:	
<ul style="list-style-type: none"> progress to date plan for implementation 	
Target Audience:	LAs - Regional Partnership Forums
Want them to:	<ul style="list-style-type: none"> be aware
How and When:	
<ul style="list-style-type: none"> provide Partnership Managers and Enforcement Liaison officers with briefing note Partnership Manager's raise at their Forum meetings 	
Key messages:	
<ul style="list-style-type: none"> be aware build compliance in to their plans 	
Target Audience:	LAs - County Liaison Groups
Want them to:	<ul style="list-style-type: none"> be aware build compliance in to their CLG plans take back and spread messages to individual LAs/EHPs
How and When:	
<ul style="list-style-type: none"> briefing note from LACoRS Policy Forum messages contained in briefing note reinforced by Partnership Managers and Enforcement Liaison Officers at CLG meetings 	
Key messages:	
<ul style="list-style-type: none"> key components of Standard timetable expectations in terms of compliance 	

Target Audience:	LAs – Members, CEOs, Heads of Service
Want them to:	<ul style="list-style-type: none"> ▪ be aware ▪ make their services compliant with Standard
How and When:	
<ul style="list-style-type: none"> ▪ tailored letter/briefing note from LACoRS, Joint Chairs of HELA (and/or HSC?) after HSC meeting ▪ include draft report for taking to relevant committees 	
Key messages:	
<ul style="list-style-type: none"> ▪ the key components of Standard ▪ the benefits of compliance to LA agenda ▪ timetable ▪ expectations on compliance 	
Target Audience:	FOD – Head of Operations
Want them to:	<ul style="list-style-type: none"> ▪ be aware ▪ ensure their services compliant with Standard ▪ encourage B2's to communicate through Group Meetings
How and When:	
<ul style="list-style-type: none"> ▪ Follow up workshop/briefing note – after the FOD MB meeting 	
Key messages:	
<ul style="list-style-type: none"> ▪ The key components of Standard ▪ Expectations on HoOPS 	
Target Audience:	Partnership Managers
Want them to:	<ul style="list-style-type: none"> • use influence to encourage LAs to comply with Standard
How and When:	
<ul style="list-style-type: none"> ▪ Briefing note for Partnership Managers (01/08) ▪ Reinforce at Partnership Manager's meetings (01/08, 02/08, 03/08) 	
Key messages:	
<ul style="list-style-type: none"> ▪ expectations on PMs and partnership teams to encourage LAs to comply 	
Target Audience:	FOD - Enforcement Liaison Officers
Want them to:	<ul style="list-style-type: none"> ▪ be aware of Standard applying to LAs and FOD ▪ use influence to encourage LAs/FOD to comply with Standard
How and When:	
<ul style="list-style-type: none"> ▪ FOD MB briefing of 10/12/07 Board meeting ▪ tailored briefing note to ELOs 02/08 Group meetings ▪ Intranet/Express 	
Key messages:	
<ul style="list-style-type: none"> ▪ key points from Standard ▪ expectations on ELOs to encourage LAs to comply 	

Target Audience:	FOD Inspectors/LA Buddies
Want them to:	<ul style="list-style-type: none"> ▪ be aware ▪ comply with the principles of the Standard
How and When:	
<ul style="list-style-type: none"> ▪ FOD MB briefing of 10/12/07 Board meeting ▪ Via ELOs/PMs ▪ Group meetings ▪ Intranet ▪ Express 	
Key messages:	
<ul style="list-style-type: none"> ▪ expectation of FOD inspectors/LA Buddies 	
Target Audience:	LAU/LACoRS
Want them to:	<ul style="list-style-type: none"> ▪ Use influence to communicate with other groups ▪ Build into own LAU/LACoRS workplan
How and When:	
<ul style="list-style-type: none"> ▪ discuss at regular LAU/LACoRS Meetings 	
Key messages:	
<ul style="list-style-type: none"> ▪ key element of partnership program 	
Target Audience:	LA - Inspectors
Want them to:	<ul style="list-style-type: none"> ▪ be aware ▪ comply with the principles of the Standard
How and When:	
<ul style="list-style-type: none"> ▪ Partnership Managers ▪ Members/CEO/Heads of Service trickle down ▪ County Liaison Group meetings ▪ FOD buddy inspectors ▪ LAU newsletter (01/08, 02/08, 03/08) ▪ LACoRS Briefings (01/08, 02/08, 03/08) ▪ HELEX (03/08) 	
Key messages:	
<ul style="list-style-type: none"> ▪ expectation on LA Inspectors 	
Target Audience:	HSE – other groups
Want them to:	<ul style="list-style-type: none"> ▪ be aware of progress ▪ be involved with further development
How and When:	
<ul style="list-style-type: none"> ▪ individual contact to key groups following FOD MB 	
Key messages:	
<ul style="list-style-type: none"> ▪ progress to date ▪ timetable ▪ need for further work 	

7. The table below sets out the activities planned to deliver the key messages

Project/Communications Plan

Committee Reports

LACoRS Board

Paper to December meeting

FOD MB

Draft Paper by 04/12/07

Agree by correspondence?

FOD MB Meeting 10/01/08?

HSE Board

Draft Paper by 17/12/07

Agreement with HSE Board Member (JMc?) by 24/12/07

Paper to Peter Buckley by 02/01/08

HSE Board Meeting 09/01/08

HSC

Draft HSC paper by 17/12/07

½ page synopsis by 07/01/08

Papers to DCE/CE by 21/01/08

Paper to Secretariat by 29/01/08

Chair's Briefing 04/02/08

Pre-meeting 05/02/08

HSC Meeting 12/02/08

Policy Forum

Paper to February Meeting

HELA

Paper to March Meeting

Local Government Panel

Agenda item for next meeting?

Other Activities

Briefing Notes

FOD MB Meeting Note (01/08)

LACoRS Policy Forum for County Liaison Groups (02/08)

LACoRS for Members/CEOs (02/08)

LACoRS for Heads of Service (02/08)

Partnership Managers (01/08)

Enforcement Liaison Officers (01/08)
FOD - Head of Operations (01/08)

Websites

Helix (03/08)
LACoRS (03/08)
HSE (03/08)

Letters

HSC to LGP (02/03)
HSC, HELA, LACoRS to Members, CEOs and Heads of Service
(02/03)

Briefing Meetings

Head of Operations (01/08)
Partnership Managers (01/08 +)
County Liaison Groups (01/08+)
Regional Partnership For a (01/08+)
CEHO Groups 01/08+

Articles

Express
CIEH publications
LAU Newsletter (01,02,03/08)

Complete Standard

Toolkits 1 (12/07)

Commitment
Priorities and Plans
Targeting
Enforcement Policy
Work in Partnership

Audit Procedure (01/08)

Edit Standard (12/07+)