



<b>Health and Safety Executive</b>		<b>Sector Information Minute</b>	
<b>Public Services</b>		<b>SIM 07/2001/18</b>	
<b>Cancellation Date</b>	12/01/2005	<b>Open Government Status</b>	Fully Open
<b>Version No &amp; Date</b>	1: 12/01/2001	<b>Author Unit/Section</b>	Education & Local Government Unit

Target Audience:  
AFQ Inspectors

## **DEPARTMENT FOR EDUCATION AND EMPLOYMENT - USE OF INTERVENTION POWERS TO IMPROVE STANDARDS OF EDUCATION**

This SIM describes how the new intervention powers given to the Secretary of State for Education and Employment under the Education Act 1996 s.497 (amended by the School Standards and Framework Act (SSFA) s.8) are being used in English local authority education departments and how health and safety management systems are affected. In Wales, these powers are available to the Welsh Assembly; however, at this stage there are no plans to exercise them. In Scotland, Ministers do not have these, or similar powers.

### **BACKGROUND**

1 Local education authorities (LEAs) have a key role to play in raising standards in education. Where an LEA fails to discharge its powers and duties adequately, the Education Act 1996 s.497A gives the Secretary of State for Education and Employment power to intervene to secure improvements. The Secretary of State might use his powers to direct an officer of the LEA to contract with a private company or another LEA so that the contractor or other LEA performs LEA functions and provides LEA services for the failing LEA.

2 This means that the key education functions of an LEA could be performed by another organisation. These key functions include: monitoring school performance and helping schools which are under achieving; ensuring there are enough school places; provision of school transport; meeting duties to children with special educational needs; education of excluded pupils; and some degree of strategic management. The Secretary of State's intervention powers only extend to the kind of central LEA functions described above and not to the day to day running of schools.

3 The 'outsourcing' arrangements will vary depending on a variety of local factors. Where particular central LEA services are to be performed by the contractor, it is likely that the LEA staff who worked on these services will transfer to the employment of the chosen contractor. Likewise, if the contractor takes over management of pupil referral units or outdoor education centres, LEA staff in such units/centres are likely to transfer. It is likely that some operational responsibilities will be retained by the LEA rather than

exercised by the contractor, for example, responsibility for capital spending in schools.

4 The 'fair-funding' framework will remain largely unaffected by the outsourcing of LEA functions. LEA staff in community, voluntary controlled, and community special schools will continue to be employed by their local authority (LA) - current Department for Education and Employment (DfEE) policy is that outsourcing of LEA functions will not change this. Equally, the employment status will not change for those caterers, cleaners and others who work in schools, but who are employed by external contractors.

#### DUTIES UNDER THE HEALTH AND SAFETY AT WORK ACT

5 Duties under HSW Act remain clear. The LA will retain the s.2 responsibilities towards its own staff, and s.3 responsibilities towards children and other non-employees in community, voluntary controlled and community special schools. The contractor will also be an employer, with s.2 duties towards its staff (including those staff who have transferred from the LEA), and s.3 duties towards LA employees and the rest of the school population.

6 Where LEA functions are outsourced, the LA will retain its powers under SSFA s.39 to direct heads and governors of community, voluntary controlled and community special schools in respect of health and safety matters. Outsourced LEAs will also keep the right to retain funding centrally for strategic management of health and safety.

7 The need to comply with duties under health and safety legislation will be highlighted in future DfEE intervention contracts. Where the Secretary of State requires an LEA to contract out functions, outsourcing contracts will specifically require the contractor to comply with all health and safety obligations, as well as requiring the contractor to co-operate with the LEA in relation to health and safety matters. In the case of a serious breach of health and safety duties, the LA could consider termination of the contract.

#### ACTION BY INSPECTORS

8 Prior to any proactive or reactive intervention, inspectors should find out if any of the functions of the LEA have been outsourced. Inspectors should be prepared to explore the way health and safety management systems are implemented, particularly how the LA, the contractor, and individual schools are fulfilling their roles, and the co-operation and communication between them.

9 HSE and Sector enforcement policy is not affected by 'outsourcing' and inspectors should be prepared to take enforcement action against LAs which fail to implement effective health and safety management systems, even if specific LEA functions have been outsourced. Depending on circumstances, it may also be appropriate to take enforcement action against the contractor.

10 However, while enforcement policy is not affected, the sector would appreciate being informed before inspectors take enforcement action against any LA where LEA functions are outsourced.

#### OTHER GUIDANCE

11 Further information can be found in SIM 7/1999/02 'Managing health and safety under fair-funding' and SIM 7/2000/06 ['Asset management plans'](#).

Date first issued: 12 January 2001

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