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Target Audience:
AFQ Inspectors
Specialist Group Inspectors

MANAGING HEALTH AND SAFETY IN SCHOOLS UNDER 'FAIR FUNDING'

This SIM, which cancels and replaces SIM 7/1999/02, provides information for inspectors on education legislation and the links with health and safety legislation. It also explains HSE's policy on how local authorities in England and Wales should comply with their duties under health and safety legislation. This SIM does not deal with the funding of local authority schools in Scotland.

INTRODUCTION

1 In April 1999 the Department for Education and Employment (DfEE) (now Department for Education and Skills - DfES) and the Welsh Office (now National Assembly for Wales (NAW)) introduced new regulations requiring local authorities (LAs) in England and Wales to increase the proportion of the education budget delegated directly to school governing bodies. The Financing of Maintained Schools Regulations 1999 were made under the School Standards and Framework Act 1998 (SSF Act). The 1999 Regulations still apply in Wales; in England, the Regulations are renewed annually.

2 The Regulations required LAs to delegate funds for an increased range of functions, many of which had previously been managed directly. SIM 7/1999/02 was produced just before the policy of 'fair funding' was implemented. A copy of the SIM and an accompanying letter was sent to all directors of education in England and Wales. However, inspectors and LAs continue to express concern about how duties under health and safety legislation link with the funding requirements under education legislation.

3 The Sector has worked with DfES and the NAW to clarify matters. Detailed, joint guidance for both schools and LAs is currently being prepared which aims to set out in more detail how health and safety should be managed.

WHO IS THE EMPLOYER?

4 The LA is the employer in all community and voluntary controlled schools. The governing body is the employer in foundation and voluntary aided schools, except in a few instances where the LA employs particular members of staff directly. Where it is the employer, the LA retains responsibility for compliance with duties under the Health and Safety at Work etc Act 1974 (HSW Act). The funding arrangements and legislative framework recognise the need for LAs to comply with their HSW Act duties.

5 Although many LAs provide some health and safety advice to the governing bodies of foundation and voluntary aided schools, they are not, under health and safety legislation, responsible for the schools' health and safety performance. The rest of this SIM deals with managing health and safety in those schools where the LA is the employer.

LEA POWERS TO ENSURE SCHOOLS COMPLY

6 Where LAs, as the employer, have duties under health and safety legislation, they also, through education legislation, have powers to ensure schools comply with health and safety policies and procedures.

7 SIM 7/1999/02 discussed SSF Act s.15 whereby an authority may give a warning notice to the governing body of a maintained school if the authority is satisfied that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise). However, HSE, DfES and NAW have now agreed that s.15 notices are not normally the appropriate way to enforce health and safety requirements in schools. Their primary function is to deal with situations where a breakdown in behaviour raises serious concerns about pupil safety.

8 More relevant is SSF Act s.39(3) which states that an authority may issue directions on health and safety matters to the governing body and head teacher of schools where they are the employer (that is, community, community special and voluntary controlled schools). Such directions can have 2 main functions. The first is to specify action to be taken in a particular situation, eg where some health and safety failing is apparent and needs to be remedied. The second is to make a direction requiring schools to comply with the authority's health and safety policies. Such a direction could only be made if the policy was already in place, and the direction was sufficiently specific as to the way in which the policy applied to schools.

9 If a governing body did not comply with a direction made under s.39(3) it would be open to the authority to apply to the Secretary of State for a direction under s.497. If the governing body still refused to comply, s.497 is enforceable through the courts via an application for mandamus and failing compliance, then action for contempt.

POWER OF ENTRY ONTO SCHOOL PREMISES

10 The School Inspections Act 1996 provides a reserve power which, if needed, should give LAs a right of access to a school to conduct any essential health and safety inspection. Section 25 provides a right of entry to a schools' premises to any authority officer inspecting a school for the purpose of gathering information to enable the LA to exercise any of its functions, where it is not reasonably practicable for the information to

be obtained in any other manner.

CODE OF PRACTICE ON LEA-SCHOOL RELATIONS

11 A new Code of Practice on LEA-School Relations for England, (the code for Wales is still the one issued by the Welsh Office in June 1999) was issued in February 2001. Some LAs quoted the previous version of the Code to argue that they could not effectively deal with health and safety in schools. The new Code has the following status paragraph:

‘The Code does not address Local Authorities’ duties as employers under the Health and Safety at Work etc Act and other relevant statutory duties. The guidance it contains is not intended to override any of these duties. Authorities should ensure that they have systems in place to manage health and safety across all services and functions, including in schools where they are the employer.’

A comparable statement will be included in the Code for Wales when it is revised.

FUNDING ARRANGEMENTS

12 Local authorities are required to produce written schemes for the financing of schools. These schemes, which require the Secretary of State, or NAW approval, set out conditions with which governing bodies must comply in managing the expenditure of the funds delegated to them; in cases of serious non-compliance, the authority may suspend the governing body’s right to a delegated budget and take over the management of the school’s budget itself. In the guidance issued by DfES and NAW on the content of these schemes, authorities have been advised to include provisions designed to ensure that they have sufficient power to ensure that the work necessary for compliance with health and safety legislation is carried out.

13 The schemes should include a provision requiring governing bodies to:

(1) supply all financial and other information which might reasonably be required to enable the authority to satisfy itself as to the schools management of its delegated budget share. Where this proved insufficient in a particular case the School Inspections Act s.25 (see [para 10](#)) could be invoked;

(2) have due regard to duties placed on the LA in relation to health and safety.

14 The schemes should also include a provision to enable authorities to charge schools for:

(1) expenditure by the authority in carrying out health and safety work for which the authority is liable where funds have been delegated to the governing body for such work, but the governing body has failed to carry out the required work; and

(2) costs of necessary health and safety training for staff employed by the authority, where funding for training had been delegated but the necessary training not carried out.

15 Local authorities can also retain money for strategic management of health and safety. This is authorised by the Financing of Maintained Schools Regulations schedule 1 in England and schedule 2 in Wales. This includes funding required for setting policies and standards, providing competence at a strategic level, carrying out active and reactive monitoring, and giving advice to schools.

SELECTION OF CONTRACTORS

16 Governing bodies are free to select sources of advice and guidance from bodies other than the LA. There is nothing to stop schools commissioning health and safety advice from sources other than the LA, but this does not mean schools can ignore the LA's health and safety policies.

17 Governing bodies are free to recruit contractors (including for carrying out all non-capital repairs and maintenance). Governing bodies cannot be required to select them from 'approved lists'. LEAs' school financing schemes will normally contain provisions requiring governing bodies to assess in advance, where relevant, the health and safety competence of contractors, taking account of the LA's policies and procedures. Some LAs offer this facility as part of the services which governing bodies are at liberty to purchase.

WHAT ARE LOCAL AUTHORITIES REQUIRED TO DO?

18 Local authorities must set health and safety policies and procedures for those schools where they are the employer, in common with similar provisions for other services which it is their responsibility to provide under local government legislation. This should include general policies dealing with health and safety responsibilities as well as policies and arrangements for dealing with specific risks such as: on site vehicle movements, violence to staff, manual handling, control of hazardous substances and work-related stress. They should also set policy for maintenance issues, especially where, as the employer, they have statutory duties, eg electrical safety, local exhaust ventilation, asbestos management, gas appliances, lifting equipment and glazing safety. There should also be a policy on the selection of contractors. Policies can also be established for off-site visits including school-led adventure activities. All policies and procedures should set out the standards schools are expected to achieve and also how compliance will be monitored.

19 It should be made clear, either in these policies or in separate documentation, which health and safety related functions are delegated to governing bodies and are therefore required to be funded through their delegated budget, and which functions are carried out by the LA.

20 Local authorities must ensure that they provide competent health and safety assistance. They should also ensure that they have competent staff in post in schools. Whilst LAs employ staff, they do not have the power to appoint, as that power is

exercised by the governing body. They must therefore have clear policies on health and safety training of staff. Where the authority consider, based on risk assessment, that specific training is required, there should be systems in place to ensure training uptake. Where governing bodies fail to release staff for 'mandatory' health and safety training, LAs should use their powers under SSF Act and invoke s.39(3). They can also charge the schools' budget share for the training, where this is permitted under the scheme for financing schools.

21 The LA should implement robust monitoring arrangements to ensure that the required standards are achieved. This will be particularly important where governing bodies employ contractors to carry out statutory maintenance. Again, the LA should be prepared to take action against governing bodies and heads if they fail to achieve the standards required.

ACTION BY INSPECTORS

22 When assessing whether the LA is ensuring, so far as is reasonably practicable, compliance with its duties under HSW Act, inspectors should consider the LA's:

- (1) health and safety policy and other relevant documentation, such as the written scheme of delegation;
- (2) guidance to head teachers and governing bodies on health and safety management, particularly the links with funding and the scheme of delegation; and
- (3) monitoring and reporting procedures.

23 Inspectors should be prepared to take enforcement action against LAs (not directors of education) where policies and procedures are inadequate, where there is no system to ensure staff in schools are properly trained in health and safety management, and/or where there are inadequate systems to monitor health and safety performance in schools.

24 In the case of an incident, where it becomes clear that good robust health and safety management systems are in place and it is the governing body who have failed to comply, it may be appropriate to take action against the governing body. Inspectors considering this action should first consult the Services Sector.

CANCELLATION OF INSTRUCTION

25 SIM 7/1999/02 - **cancel** and **destroy**.

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