

**Health and Safety Commission and Local Government Panel meeting
7 November 2006**

**Applying the recommendations from HSE's Enforcement Programme
within LAs and an update on the Better Regulation Executive Penalty
Review**

A paper by Laurence Monaghan, Enforcement Programme, HSE
Cleared by Sandra Caldwell, Enforcement Programme Director, HSE

Issue

1. The application of the recommendations of the Enforcement Programme within LAs. Delivery of consistent enforcement activity across LAs. An update on the Better Regulation Executive Penalty Review (the Macrory review).

Recommendations

2. That HSC and LGP:
- support the recommendations of the Enforcement Programme as discussed by the October 2006 LACORS policy forum and set out in the attached paper;
 - consider and confirm LA inspectors' obligations to the principles and expectations of the HSC's Enforcement Policy Statement;
 - consider and confirm the role of the Code for Crown Prosecutors in prosecution decision making;
 - consider the use of an agreed common incident selection criteria for LAs and HSE; and,
 - note the update on the Macrory review of alternative penalties.

Background

3. The Enforcement Strategic Enabling Programme was established by HSE to develop proposals to make best use of formal enforcement in delivery of health and safety priorities. Throughout its life the Enforcement STEP has had considerable LA representation to ensure that the LA perspective has been taken into account when developing proposals.

4. In October 2006 the Programme set out its recommendations in a paper to the LACORS Policy Forum (annex 1) and asked they consider and agree them. An earlier paper from the Programme to the June 2005 Policy Forum (annex 2) contained the research into LA enforcement on which the Programme was developing its recommendations.

5. During the discussion at the October Policy Forum attention was drawn to two important issues facing LAs. These were: the relationship between national (e.g. HSC's EPS) and local authority enforcement policies; and that

LAs tend to investigate 20% of accidents while HSE investigates only 8% and the implications for this of common selection criteria.

Argument

The Recommendations of the Enforcement Programme

6. At the October LACORS Policy Forum the Enforcement Programme presented a paper setting out recommendations that covered efficiency issues, the aligning of enforcement behind delivery of strategic priorities, and the use of communications within enforcement delivery. There was broad support among the forum for the recommendations but they would need to be discussed by county health and safety liaison groups. The Chairman welcomed the proposal that the programme team return regularly to the forum with updates and to engage views. LACORS would capture opinions and discuss with HSE, and publicise issues to regional liaison groups.

7. The Programme team believes that by adopting the measures recommended LAs can improve their use of enforcement to secure improvements in health and safety standards, and enable the delivery of justice. To encourage the future take up of the measures by LAs the Programme **asks that the Panel support the recommendations of the Enforcement Programme as discussed by the October 2006 LACORS policy forum and set out in the attached paper.**

National and local accountabilities for LAs

8. HSC expects that LA inspectors follow the general principles and approach of HSC's EPS when taking enforcement decisions (the relevant paragraphs are summarised in annex 3). LAs enforce a number of regulatory regimes and their enforcement policies, informed by the enforcement concordat, reflect this. In order to promote consistency the Programme **asks that the Panel consider and confirm LA inspectors' obligations to the principles and expectations of the HSC's Enforcement Policy Statement.**

9. The Code for Crown Prosecutors applies when all prosecutions are considered whether HSE or LAs. This requires a consideration of the evidence, the evidential stage, followed by a public interest stage. The Code provides guidance on the consideration of public interest factors, both for and against prosecution. To support compliance with the requirements of the Code within LAs the Programme **asks that the Panel consider and confirm the role of the Code for Crown Prosecutors in prosecution decision-making.**

Incident selection criteria

10. Another area where the Forum felt it important HSE and LAs work together was in seeking consistency in investigation workloads. Investigating high numbers of incidents can place significant limits on the resource available to conduct any resulting enforcement actions. HSE investigates 8% of accidents using Incident Selection Criteria approved by the Commission

(annex 4). LAs investigate 20% of accidents through the application of their own selection procedures based on guidance contained within a HELA circular. To achieve greater consistency in LA and HSE investigation activities where appropriate the Programme **asks that the Panel consider the use of an agreed common incident selection criteria for LAs and HSE.**

An update on the Macrory review of alternative penalties

11. In March 2005 The Hampton Review recommended that BRE should undertake a comprehensive review of Regulator's penalty regimes. In Autumn 2005 the BRE asked Prof. Richard Macrory, Professor of Law at University College, London to conduct a review of penalties with the aim to bring the sanctioning regimes of 60 national regulators and 468 local authority regulators into line with the risk-based proportionate model of regulation set out in the Hampton Review. Following the publication of a discussion paper in late 2005, in May 2006 the Macrory Review published a consultation document setting out proposed elements of reform of the penalties system and key principles and framework for applying penalties.

12. Following consultation with internal and external stakeholders, including local authorities and LACORS, the Health and Safety Commission responded to the consultation in August 2006. A copy of Bill Callaghan's covering letter is attached in annex 5. Details of the July 2006 Commission paper, full response to the consultation and associated annexes can be found at HSC's website - <http://www.hse.gov.uk/aboutus/hsc/meetings/index.htm>.

13. The Macrory Review team is expected to produce the final report of findings within the near future. Following publication HSE will review the findings, consult with local authority parties where appropriate, and advise the Commission.

Action

14. The Panel agrees the recommendations set out in paragraph 2.

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**LACORS POLICY FORUM
Meeting: 3 October 2006**

Recommendations from the Health and Safety Enforcement Programme

A paper by Eddie Bailey
Cleared by Sandra Caldwell, Enforcement Programme Director

Issue

1. Applying the recommendations from the HSE/LA Enforcement Strategic Enabling Programme (STEP) within LAs.

Recommendation

2. That the Policy Forum agrees the recommendations proposed in this paper.

Background

3. The Policy Forum was provided with an information paper on the work and progress of the Enforcement STEP at its meeting in June. The cover paper (with the STEP's High Level Plan but not the other attachments) is reproduced at annex 1 for ease of reference. Since June, further discussions have taken place with LAU, LACORS and LA representatives as to the extent to which the recommendations from the Enforcement STEP can be applied within LAs and the mechanism for so doing.

4. In proposing the recommendations, the Enforcement STEP is keenly aware that the environment in which LAs regulate is different from that in HSE. While HSE is a single issue regulator, LAs cover a range of regulatory and service delivery functions with different local pressures. In recognition of this, a number of the recommendations are couched in broader terms than their equivalents for HSE. However, the Enforcement STEP believes that their implementation is entirely apposite to our partnership ambitions and the aim of adopting consistent approaches to all our work. They should lead to a more effective use of enforcement activity within LAs. And it should be borne in mind that both HSE and LAs' enforcement function has to comply with the principles laid down in HSC's Enforcement Policy Statement (EPS) – see <http://www.hse.gov.uk/pubns/hsc15.pdf>

Argument

5. The recommendations fall within the following categories: improving the efficiency of investigation and prosecution processes; aligning preventive

enforcement activity with Fit3 strategic priorities; targeting “rogues”; and the more effective use of communications.

6. The Policy Forum's consideration of the draft revised s.18 guidance on the Standard for Health and Safety Enforcing Authorities is opportune and strongly supported by the Enforcement STEP. The recommendations from the STEP can be linked directly to a number of the principles set out in that document and a number of the STEP's proposals should help LAs in their continuing adherence to the Standard.

Efficiency issues

7. The evidence we have collected, as outlined in annex 1, suggests that efficiencies can be made in the way in which reactive caseloads, principally investigations and prosecutions, are managed. Within HSE, the following improvement measures have been implemented or are being piloted:

- issuing a message to all field staff reinforcing the importance of ensuring that enforcement decisions are in line with the EPS, attached at annex 2;
- revising procedures to target investigations better and to ensure that more stringent pre-investigation planning and close case management takes place. These measures will help to ensure that the resource dedicated to this work is used cost effectively and administers a more balanced consideration of the factors to take into account when selecting incidents (as set out in paragraph 33 of the EPS);
- paying more attention as to how evidence collection is planned and targeted to ensure that unnecessary information gathering is avoided and the right level of resource supplied, to enable the evidence to be collected, managed and assessed in a timely manner;
- extending front-line capacity, for example through the greater involvement of administrative staff in supporting investigation and enforcement work;
- developing a range of key performance indicators focusing on the targeting, time and cost of investigations and consistency of decision-making. As part of this, line managers will have to sign off investigations and be satisfied with both the correctness of the Enforcement Management Model (EMM) decision and consistency with the EPS;
- continuing the development of inspectors' investigation and enforcement skills; and
- considering more robustly when to call on specialist support during investigations and when and how best to draw in legal advice.

8. LA representatives on the STEP Programme have been kept in touch with these developments and the products that have been generated by them. While recognising that the environment in which LA health and safety inspectors operate is different from their HSE counterparts, LAs should be encouraged to consider whether some/all of the improvements listed above

could usefully be extended into the LA enforcement function, namely that those managing health and safety caseloads within LAs:

- satisfy themselves that incidents are selected for investigation that are clearly linked to delivering the joint HSE/LA strategic aims. This could be achieved by a commitment to follow HSC's Incident Selection Criteria and the filters developed by the Enforcement STEP;
- ensure enforcement decisions are consistent with the EPS and EMM;
- ensure close case management takes place to maintain the momentum of investigations and ensure resources are being used to best effect;
- examine the scope for greater flexibility in the use of resources devoted to health and safety, for example in making more use of administrative staff to deal with the more routine aspects of investigations;
- consider introducing similar performance indicators as HSE to assist the effective handling of such work; and
- continue to develop LA health and safety enforcement officers' knowledge and skills in relation to enforcement, in line with recommendations from the SITNA report.

9. In taking such measures, LAs will readily be able to assure themselves that they meet the requirement laid down in the s.18 Standard under the principle "doing it right" where Enforcing Authorities are required to "target their interventions, including enforcement action, where they will be most effective and will have the greatest impact"; and to the s.18 principle "making it happen" where the Standard requires effective management and reporting arrangements to be in place, with clear systems of control.

It is recommended that the Policy Forum supports the proposals in paragraph 8; and, more specifically, that LAs are drawn in to the HSE pilots currently underway to trial some of the continuous improvement measures referred to in paragraph 7 to see whether they could be applied to LAs.

Aligning enforcement behind Fit3 delivery

10. Considerable progress has been made to embed the role of preventive enforcement into Fit3 planning and delivery. Such enforcement will be more closely aligned with Fit3 programmes' priorities and managed to ensure a consistent and correct approach, in line with HSC's EPS. The Enforcement Programme has been working with the Fit3 programme and communication managers to ensure that strong messages on the role of preventive enforcement in Fit3 have been communicated to, and understood by HSE and LA operational field staff, primarily through the Fit3 Roadshows; and to provide inspectors with operational guidance that includes expectations of the circumstances as to when enforcement action within Fit3 is to be taken.

11. To maintain this momentum, the HSE authors of the inspection topic packs have been reviewing the currency of the material contained within the packs, with a view to re-launching them in the Autumn. In doing so, they have

been asked to consider providing a summary of key points specifically for LA inspectors who may have less time to familiarise themselves with such detailed documents. The topic packs provide guidance on benchmark standards and should be used to determine the “risk gap” and initial enforcement expectation by application of the EMM. This will also help to underline preventive enforcement messages to EHOs. Linked to this, LAU has already given a commitment to review and reissue LAC 67/1 (rev3) on intervention programmes and inspection rating system.

12. As part of the planning process for 07/08, Fit3 programme managers and FOD operational delivery partners for some of the more mature risk areas, eg falls from height, workplace transport and duty to manage asbestos, will also be considering piloting proactive pre-harm prosecutions where there is clear evidence of a significant gap between working practices and well established health and safety benchmarks.

13. To support them, the Enforcement Programme has been developing a package of materials to assist inspectors with some of the procedural aspects of taking cases which, when finalised, will be shared with those LAs interested in this enforcement approach. There has been something of a mixed response from LA representatives during discussion on whether LAs would want to get involved in these pilots. Some have expressed interest, some have doubts about the resource implications while others would prefer to wait until HSE had conducted and evaluated their pilots.

In the context of the review and re-issue of the topic packs and the impending availability of a package of support materials for taking pre-harm prosecutions, it is recommended that the Policy Forum supports LA involvement in proactive pre-harm prosecution work; and that the Enforcement STEP undertakes further discussions with LAs, via LA Partnership Managers (and HSE Programme managers) to identify LAs interested in taking such prosecutions.

Communications

14. Annex 1 provides a summary of how important effective communications are in securing clear and consistent messages about the role of enforcement and highlights some key developments to date. The Enforcement Programme has been building on these but more needs to be done with LAs in particular to ensure a continuing dialogue about how the role of enforcement is maintained, for example:

- engaging with Elected members about the purpose and value of enforcement in securing improvements in health and safety standards. This would build on the Guide for Elected Members issued last year;
- the extent to which LA inspectors would find it useful to have access to the e-community of inspectors being developed as part of the revamped HSE enforcement intranet;
- greater sharing of case studies illustrating good enforcement practice and/or partnership working;

- the scope for more joint communications activity at a local level, eg publicity surrounding successful enforcement action and its ripple and wider deterrent effect; and
- continuing to generate enforcement focused articles for the LAU newsletter and extranet.

15. Again, there is clear read across here to the s.18 Standard and the principle of working in partnership with others – joint campaigning, sharing best practice and intelligence and so on.

It is recommended that the Policy Forum supports these communications activities and offers advice on how best they might be achieved.

“Rogues”

16. An additional workstream taken forward by the Enforcement STEP was 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.

17. 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.

It is recommended that the Policy Forum supports continuing LA involvement in this work.

Additional support for LAs by HSE

18. The evidence we have suggests that LA inspectors value the support of their HSE counterparts as well as access to specialist advice when carrying out investigations and undertaking prosecutions. In some regions these informal arrangements are undertaken as a buddying system between named officers. There may be benefit in making these arrangements nationally-based and more formalised, leading possibly to increased involvement of LA inspectors in HSE investigations, and vice-versa so that they can learn from one another.

19. One area where LAs would welcome further support is access to HSE legal advice; or in HSE underwriting some cost in taking forward more major investigations. However, there are challenges with this on legal and resource

grounds and to avoid a possible conflict with HSE's role as the enforcing authority for the LA sector and further discussion is necessary.

It is recommended that an evaluation is carried out of the existing informal HSE/LA buddying system to determine the cost and benefits of rolling out the arrangements on a national basis and on a more formal setting.

Taking the work forward

20. 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 and monitoring the effect of those improvement measures already put in place. A new, smaller Programme Board will be established to oversee this process and will include LA representation.

21. A key issue for the future is to sustain and build on the work initiated by the Enforcement STEP, ensuring continuous improvement in the enforcement process. The role and influence of the HSE/LA Partnership Managers will be crucial in acting as the link between the team taking forward phase 2 of the Enforcement STEP's work and practitioners on the ground. Formal liaison arrangements will need to be established.

Action

22. The Policy Forum is invited to endorse the proposals set out in this paper.

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LACORS POLICY FORUM
Meeting: 12 June 2006

The Health and Safety Enforcement Programme

A paper by Eddie Bailey
Cleared by Phil Scott

Issue

1. The application to LAs of findings and recommendations from the work of the HSE/LA Enforcement Strategic Enabling Programme (STEP).

Recommendation

2. That the Policy Forum notes the findings from the work of the STEP and begin to consider the extent to which they should be applied to LAs and how this can be brought about. A further paper providing more detailed proposals will be on the agenda for the Forum's meeting in October. This will reflect both the views of the Policy Forum and the continuing work with LAs by the Programme.

Background

3. The Enforcement STEP was fully established in Autumn 2005. In the context of declining health and safety enforcement statistics within HSE, its primary aim is to develop proposals to make best use of formal enforcement in delivery of health and safety priorities. To tackle this task, the work of the Programme has been broken into 8 interconnecting workstreams as explained in the High Level Plan at Annex 1.
4. The purpose of this paper is to bring the Forum up-to-date with developments in the key workstreams – seeking efficiencies in investigation and prosecution work through improved performance management; utilising preventive enforcement in support of delivery of the Fit3 Strategic Programme; and optimising communications.
5. The Programme has had considerable LA representation to ensure that the LA perspective has been taken into account as proposals emerge. Two LA representatives sit on the Programme Board, together with Phil Scott, Director of the Strategic Enabling Programme for the HSE/LA partnership, and Mark Du Val of LACORS. Four LA practitioners, who sit on an HSE/LA Working Group, also support the Programme and an experienced LA inspector has been seconded into the Programme from Bristol City Council.

Progress

Research

6. The Programme Board has been keen to ensure that any proposals for change would be grounded on research, with evidence to show their justification. One strand of the research workstream has comprised a review both of health and safety literature and of research undertaken by other regulators, to answer some key questions about the use and effectiveness of enforcement generally. The findings are at Annex 2. There is clear evidence that enforcement motivates compliance with health and safety law within a mix of interventions and the Programme Board has since concluded that no further significant research be spent in this area (but see paragraph 18 below).

7. A second strand to the research workstream focused on the perceptions of the role of health and safety enforcement as expressed in interviews with HSE and LA practitioners. As background, during March 2005, members of the Enforcement Programme team, with support from HSE's Local Authority Unit, Partnership Teams and LACORS attempted to paint the enforcement picture within LAs and reported the following:

- as with HSE, there are significant differences in levels of health and safety enforcement between teams and authorities;
- 25% of LAs take 75% of LAs' enforcement action. This is often the larger authorities with higher numbers of premises, officers and RIDDOR reportable accidents but this is not universal;
- as with HSE, prosecutions are more likely to be taken as a result of reactive contacts;
- notices are equally likely to be served during reactive or proactive contacts;
- numbers of notices are likely to increase during special projects;
- historically, as with HSE, enforcement action has been more likely to be taken on safety issues rather than health;
- enforcement action is more likely to be taken by inspectors in specialist teams where levels of support and competence are high;
- "high enforcing" LAs have been that way historically, those LAs who have served well in excess of the average number of notices during 2003/04 also served high number in the previous three years;
- some LAs feel that better contact with HSE/Enforcement Liaison Officers would increase enforcement;
- some LAs do not take enforcement action;
- some LA inspectors have reported that local factors are likely to have an influence as to whether enforcement action is taken; and
- some LAs use a Formal Caution as a 'final warning' before prosecution.

8. A structured questionnaire exercise was set up to explore some of the issues arising from this initial, rough analysis. The findings are at Annex 3 with the key points being that:

- there was a difference of opinion about the role of enforcement in securing compliance with health and safety law. Some interviewees felt it a prime motivator, others considered it secondary to other methods (recognising tho' the power of the background threat of enforcement on duty holders);
- most agreed that enforcement had a role to play in delivering improved health and safety outcomes, resources permitting;
- there was an apparent lack of awareness among, or direction from, senior LA management in health and safety enforcement;
- the interpretation of HSE's message on the role of enforcement was mixed – some felt they were being pushed toward it, others away;
- topic-based inspection was perceived as having the potential to hinder enforcement activity;
- LAs continue to be faced with a conflict of demands in their regulatory roles, usually having to run different caseloads in parallel;
- most interviewees felt that their LAs carried out about the right level of health and safety enforcement activity;
- any move to greater team working would be hampered by resource issues - existing flexibility was felt to be sufficient in dealing with investigations;
- the experience and confidence of practitioners had a direct effect on whether enforcement action was taken;
- interviewees felt that HSE's Enforcement Management Model was a useful tool but that its user-friendliness could be improved;
- most felt the timeliness of prosecution reports could be improved; more broadly, many reported difficulty in maintaining the momentum of prosecutions;
- while there seemed to be little interchange of enforcement data between LAs, interviewees felt that they had a good understanding of their profile in relation to others; the amount of sharing of good practice with colleagues was high;
- while the media had a role to play in enforcement activity, it had been difficult to drum up enthusiasm to get good press coverage.

9. In the light of these findings and as a first step, the Programme team, notably our LA secondee, has been undertaking a series of visits to engage with LA partnership teams to share the information and explore ways to address some of the issues, for example to promote a consistent message on the role and application of enforcement, in accordance with the Commission's Enforcement Policy Statement. Further work is being undertaken to develop more detailed proposals to tackle some of the issues raised by the questionnaire findings.

Performance management

10. The equivalent interview exercise within HSE threw up many of the same perceptions as those conducted with LA practitioners, with additional pointers to the potential benefits of greater team working and increased flexibility when undertaking investigations or taking prosecutions. There is a high level expectation within HSE that major efficiency gains could be achieved through process re-engineering within the Field Operations Directorate (FOD), its largest enforcement arm, to improve the way in which investigation and prosecutions are handled.

11. Much work has since gone on to develop recommendations, with LA involvement, that list a set of proposed continuous improvement measures and key performance indicators (KPI), eg in relation to the timeliness of prosecution approvals, average cost of investigation, average duration of investigation etc, to be assessed against set benchmarks. These continue to be worked up but once agreed in principle within FOD, will be shared throughout HSE and with LA colleagues for them to assess whether any of the continuous improvement measures or KPIs could usefully be introduced elsewhere, linking across to the work already underway to develop a performance management framework.

12. Discussions also continue on the scope and desirability of structural change in FOD to engender greater team working and more efficient use of resource. If implemented, this could extend into greater mutual HSE/LA support arrangements.

Enforcement supporting delivery of Fit3

13. This workstream was established to explore the ways in which formal enforcement activity could support delivery of the Fit3 Strategic Programme. HSE and LAs have a long established risk-based intervention strategy whereby an awareness-raising phase is followed by an inspection and enforcement phase targeted at those who have failed to respond to the advice given them. This effective strategy has been transferred to Fit3 and adopted by all the individual programmes, with the detail and timing dependent on the maturity of each programme.

14. A considerable amount of effort has been devoted to providing inspectors with operational guidance that includes expectations of the circumstances of when enforcement action is to be taken (as part of this, the inspection topic packs will be relaunched in the Summer). And, in line with the Hampton report, much is being done to target poor performers¹. If successful, it is reasonable to assume that inspection will lead to an increased level of preventive formal enforcement activity, including prosecutions.

¹ This includes “rogue traders”. There has been unanimity in the views expressed within HSE and from LA representatives that our approach to tackling rogues should be risk based, proportionate and should not divert resource from other pressing priorities. A paper put to the Enforcement Programme Board on this issue is available on request.

15. The successful delivery of some Fit3 programme plans is highly dependent on a significant contribution from LAs. LAs have been included in events such as the Fit3 Roadshows and internal HSE guidance is being translated into the appropriate LA format. As such LA inspectors will continue to receive the same enforcement messages as their HSE counterparts, complemented by the Enforcement Programme's LA secondee undertaking a series of visits to all LA partnership teams to promote those messages.

16. Building on a successful initiative in the construction sector, a number of pilots will be run in the more mature health and safety risk areas to take preventive prosecutions where there is clear evidence of a significant gap between working practices and well established health and safety benchmarks. Further discussions are underway with LA representatives to explore whether such pilots could be extended into the LA sector.

Communications

17. Improving communications is key. By this we mean: the correct positioning of enforcement in the mix of interventions at our disposal; countering mixed messages of our respective roles to both internal and external audiences; providing better information about our enforcement role; seeking to work together to build and sustain a ripple effect from our health and safety enforcement activity; and to share best practice.

18. The Programme team, led by our Communications manager, has begun to meet these challenging demands through its communication plan (available on request). While we have ensured that articles on the role and aims of the enforcement STEP have appeared on the Extranet and in the LAU online newsletter, our main initial focus has been on HSE's internal messaging. Our priorities are now turning to:

- work with Fit3 Communication Managers to ensure that the strategic messages of appropriate, proportionate but 'fair but firm when necessary' enforcement are integrated into Fit3 communications plans;
- agree effective targeting of these messages across HSE and LAs to ensure the right message reaches the right audience at the right time;
- undertake research into the ripple effect;
- provide support to HSE and LA inspectors to ensure best practice and efficiency in the use of communications, jointly sharing information and exploring joint activity in key target areas at key campaign times;
- explore the possibility more generally of more 'joined-up' HSE and LA local and regional media activity;
- redesign the HSE enforcement web micro-site and internet page to ensure they are more audience focused and relevant, easier to understand and simpler to access; and
- develop an electronic-based community of inspectors – open to both HSE and LA inspectors - to enable them to share best practice, including case study material of unusual/challenging/successful enforcement activity.

Action

19. The LACORS Policy Forum is invited to note the contents of this progress report. The Programme team would welcome any observations on the paper and will be continuing our engagement with LA representative groups.

20. A further paper will be put to the October meeting of the Forum setting out more detailed proposals on how the recommendations from the work of the Programme could be taken forward within LAs. This would coincide with the Programme winding down soon after. Some of the recommendations will need longer-term management and implementation so will need to be taken forward through established partnership forums eg new HELA.

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Extracts from Health and Safety Commission's Enforcement Policy Statement

The principles of enforcement

10 HSC believes in firm but fair enforcement of health and safety law. This should be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach; *targeting* of enforcement action; *transparency* about how the regulator operates and what those regulated may expect; and *accountability* for the regulator's actions. These principles should apply both to enforcement in particular cases and to the health and safety enforcing authorities' management of enforcement activities as a whole.

Prosecution

35 In England and Wales the decision whether to prosecute should take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

36 While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. HSC expects that where in the course of an investigation an enforcing authority has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution should go ahead. Where the circumstances warrant it and the evidence to support a case is available, enforcing authorities may prosecute without prior warning or recourse to alternative sanctions.

[similar paragraphs relating to prosecution in Scotland omitted]

39 Subject to the above, HSC expects that, in the public interest, enforcing authorities should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- death was a result of a breach of the legislation;⁴
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without or in serious non-compliance with an appropriate licence or safety case;

- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a formal caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- inspectors have been intentionally obstructed in the lawful course of their duties.