

**HEALTH AND SAFETY COMMISSION and LOCAL GOVERNMENT PANEL
MEETING 9 MAY 2006**

**LA/HSE CONSULTATION WORKSHOPS ON THE LEGAL ENFORCEMENT
FRAMEWORK OF THE LA STRATEGIC ENABLING PROGRAMME**

**A Paper by HSE Local Authority Unit/LACoRS
Cleared by Justin McCracken (HSE) on 25 April 2006**

Issue

1. The LAs & HSE Working Together Strategic Programme Steering Group recommended at its final meeting that delegate feedback from the LA/HSE consultation workshops held in November 2005 should be presented to this meeting to inform the Commission and LA Elected Members. The consultation workshops included a discussion of our emerging proposals for the:

- Duty to make 'adequate arrangements' for health and safety enforcement under Section 18 of the Health and Safety at Work etc. Act (s.18 HSWA).
- Allocation of enforcement responsibilities between LA and HSE (Health and Safety (Enforcing Authority) Regulations).
- Measurement of performance in health and safety enforcement (common performance framework for LA and HSE).

Recommendation

2. The Commission and Local Government Panel are asked to comment on delegate recommendations and responses from the consultation workshops in paragraphs 9 – 11 and to support the work that is in progress to implement a number of the recommendations as shown in Annexes 1 and 2.

Background

3. The Statement of Intent (see Annex 3) agreed between HSC/E and local government representative bodies in July 2004 sets out our commitment:

- to examine and adapt as necessary the institutions and legal framework which currently underpin the relationship between HSC, HSE and LAs; and
- to develop arrangements for monitoring and auditing the work of the enforcing authorities, which properly reflects the status of HSE and LAs as partners.

4. The work to achieve these two objectives includes:

- a review of the HSC's s.18 HSWA guidance to enforcing authorities (EAs);
- a review of the Health and Safety (Enforcing Authority) Regulations (EA Regs);

- the development of pilots for flexible warranting between HSE and LA officers;
- the development of a common performance framework.

5. As part of our commitment to working in partnership with LAs, a series of 10 GB-wide consultation workshops were held in November 2005. The purpose of these was to consult with LA and HSE colleagues on the emerging proposals for the areas highlighted in paragraph 3. The workshops were held in Scotland, Wales and each of the LA/HSE Partnership regions in England. Two workshops were held in each of the Yorkshire and the North-East, and the East and South-East Partnership regions to take account of increased demand in these areas.

6. A total of 551 LA and HSE delegates attended the 10 workshops. Of these, 475 delegates were from LAs and 288 LAs (70%) were represented. Of the LA delegates, approximately 16% were Chief Environmental Health Officers (or equivalent) or a higher grade. The remaining LA delegates were experienced health and safety practitioners, many managing teams of officers. The HSE attendees were primarily principal inspectors.

Argument

7. The views expressed by officers at the workshops, for example support for a prescriptive standard for LAs, may not be aligned with wider local government objectives and Elected Member perceptions. At the HSC meeting of 14 February this year, paper HSC/06/09 informed the Commission of work to implement the four work streams shown in paragraph 4 following on from the consultation exercise. As noted in that paper, the Hampton Report and subsequent work by the Better Regulation Executive, and the Local Better Regulation Office (LBRO) will impact upon the Programme. Further developments on this front are being kept under close observation by the Programme team members. Most notably, LBRO work to develop regulatory priorities for LA Environmental Health and Trading Standards services will impact on the proposed Programme work to develop a common performance framework.

8. Delegate comments on the four workstreams have been taken on board and Annexes 1 and 2 describe work in progress to implement these. Annexes 4 –7 provide further background and feedback from the workshops.

Responses from the workshops

Summary of feedback on the review of the legal framework

9. There was support from workshop delegates for:

- the emerging Local Authority Programme proposals on the s.18 HSWA standard, the EA Regulations and the development of a common performance framework.
- the LAs and HSE Working Together Partnership.
- greater monitoring of LA performance and the use of proportionate sanctions (seen as giving officers a greater argument to safeguard health and safety resources, linked to next two bullets).

- defined levels of resourcing and capacity to raise the profile of health and safety enforcement.
- a prescriptive s.18 HSWA standard and focus on HSC's key national priorities, whilst allowing for local flexibility and priorities.
- one regulatory s.18 HSWA standard for both HSE and LAs.
- the principle that the s.18 HSWA standard should focus on how EAs will 'make a difference' and have an impact on improved health and safety outcomes.
- a combination of systems to compare the performance of HSE and LAs. These were based principally on measuring compliance with statutory arrangements together with the impact that the EAs have had on health and safety improvements (through the measurement of inputs, outputs and outcomes).
- the use of flexible warranting.
- the s.18 HSWA, EA Regs and performance frameworks being consistent with the emerging Better Regulation Executive (and Local Better Regulation Office) frameworks and the recent Hampton Review on LA regulatory services.
- the suggestion to create a new single H&S Enforcing Authority. Views from LAs during consultation on the HSC Strategy expressed a wish for more partnership working. This theory was again tested following closer working between HSE and LAs. The view of officers was that a new national inspectorate should be formed combining LAs and HSE.

Summary of general comments from the workshops

10. There was support from workshop delegates for:

- the workshops (from LA delegates) as an opportunity to shape and influence the development of policy. Over 85% of delegates agreed or fully agreed that their contribution was worthwhile.
- the workshops and syndicate exercises as an excellent opportunity to work together and to express and exchange views.
- the workshops as a successful opportunity for HSE and LAs to work closer together and develop mutual respect.

11. There were concerns from workshop delegates that:

- the consultation exercise was a fait accompli and that decisions had already been made.

Consultation

12. LACoRS, HELA, and senior HSE officials.

Timetable

13. A timetable for implementation of the work on s.18 HSWA guidance, EA Regs and flexible warranting is shown in the Annexes 1 & 2. This information was presented to HSC on 14 February this year.

14. Work on the development of a common performance framework is being reviewed in the light of LBRO activity to develop a regulatory performance framework for LA Environmental Health and Trading Standards services.

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Annex 1: Section 18 HSWA Guidance – Principle 5 of Statement of Intent

Stated objectives	Progress made towards achieving objectives	Remaining work and development required to achieve objectives.	What this will look like after the transition from a developing Programme to routine operation
<p>To review the policy, content, substance and weight of the current s.18 guidance and redraft it to reflect and affect the new and developing partnership.</p>	<p>Existing s.18 HSWA guidance restructured and rewritten to:</p> <ul style="list-style-type: none"> • set out what HSE and LAs should do to make adequate arrangements for enforcement; and • reflect targets, partnership, capacity, interventions, communications and new regulatory agendas <p>Discussion workshops on restructured and rewritten s.18 HSWA standard with 288 (out of total 410) LAs and a number of HSE staff. Incorporation of delegate comments (e.g. one standard for HSE/LAs and a focus on outcomes and national/local priorities).</p>	<p>Incorporate delegate comments from LA/HSE Workshops (Jan-March 06).</p> <p>Further discussions with HSE at strategic and operational level on restructured and rewritten s.18 HSWA standard (April-June 06).</p> <p>Modify the detailed guidance and develop a method to describe a model enforcing authority in the light of discussion workshop results. (April-July 06).</p> <p>Gain approval for new s.18 HSWA arrangements from new LA/HSE governance bodies and agree implementation proposals.</p> <p>Final consultation process in summer/autumn 2006. Implement recommendations from consultation.</p> <p>Implementation of s.18 HSWA standard by HSE and LAs from suggested target date of April 2007.</p> <p>Work with new and emerging regulatory frameworks, e.g. LBRO to ensure consistency and on developing compliance monitoring. (Ongoing).</p>	<p>A new s.18 HSWA document that:-</p> <ul style="list-style-type: none"> • is in place and available via the Extranet. • is being implemented by LAs and HSE. • has an agreed compliance monitoring system. • encourages partnership working, greater consistency and improved health and safety outcomes. • Consistent with the bigger regulatory picture, e.g. LBRO, Hampton, LAAs, Central Local Partnership framework.

Annex 2: Enforcing Authority Regulations (EA Regs) – Principle 5 of Statement of Intent

Stated objectives	Progress made towards achieving objectives	Remaining work and development required to achieve objectives.	What this will look like after the transition from a developing Programme to routine operation
Review the need for the EA Regulations, the potential options for the structure of any revised EA Regs and any legislative barriers to effective partnership working	Current EA Regs issues and ‘grey areas’ reviewed and discussion document on options produced	<p>Incorporate Delegate comments from LA/HSE Workshops (Jan-March 06).</p> <p>Establish practicality of amending or “fine tuning” current EA Regs. (May 06)</p>	<p>A system and structure in place that allows and encourages HSE and LAs to: -</p> <ul style="list-style-type: none"> • work flexibly and lawfully • use their joint resources in the most effective manner • jointly plan and agree at local and national level the number and type of interventions they will undertake.
	Discussion workshop on EA Regs options and use of flexible warrants with 288 (out of total 410) LAs and number of HSE staff	Develop mechanisms to encourage joint HSE/LA planning, competency, training, common guidance and procedures and to allow access to specialist support and resources. (Apr 06 – Mar 07)	
Establish potential for LA officers to work with national warrant	Transfer of HSE activity (MVR and Dry Cleaners) to LA being piloted in England	Review effectiveness of transfer of HSE activity pilot for wider application (Jan 06 – Dec 06)	
	Joint authorisation” pilots in SE. NE, SW, Scotland and Wales started	<p>Continue “joint authorisation” pilots to test their robustness. (Apr 06 – Mar 07)</p> <p>Evaluate joint authorisation projects and develop framework and structures needed to allow wider adoption. (May 06 Jun 06)</p> <p>Review and amend the current EA Regs - where practical. (start Summer 06)</p>	

Annex 3**THE STATEMENT OF INTENT**

The Statement of Intent (Sol) agreed between HSC, HSE and local authority representative bodies in July 2004 contains seven 'commitments'. These are:

1 Developing an effective and coherent partnership between HSE and LAs, based on the principle of making the best use of their respective strengths, and applying collective resources in the best way to tackle national, regional and local priorities for health and safety.

2 A joint approach to developing the arrangements to deliver these commitments.

3 Improving communications between HSC, HSE and LAs to ensure, in particular, that LAs and their representative organisations are adequately involved the development of policy advice to the HSC, and in the planning and delivery of the operational activities which carry them into effect.

4 Providing information, guidance and support to enforcing authorities equitably.

5 Examining and adapting as necessary the institutions and legal framework which currently underpin the relationship between HSC, HSE and LAs.

6 Developing arrangements for monitoring and auditing the work of the enforcing authorities that properly reflect the status of HSE and LAs as partners.

7 Contributing effectively to current and future initiatives to improve the consistency and coordination of central and devolved government requirements which impact on regulatory services, in the context of expectations, priorities, minimum standards, monitoring and intervention.

The Sol and further information on the Programme is available at <http://www.hse.gov.uk/lau/strategic.htm>.

Annex 4

Notes on Section 18 and 'adequate arrangements' for enforcement

Outline of legal duties

- Section 18 of the Health and Safety at Work Act 1974 (HSWA1974) covers:-
 - i) The duty on HSE and LA's to make adequate arrangements for enforcement and in the case of LA's to perform this duty in accordance with Commission guidance and;
 - ii) The division of enforcement responsibility between HSE and LAs

Need for a new Section 18 guidance or standard

- Many changes have occurred since the last S 18 guidance was re-issued in 2001 (and revised in 2002) not least the start of the LAs and HSE Working Together Strategic Programme and the review of regulatory services by Philip Hampton.
- As the only means available for describing what constitutes adequate arrangements for enforcement the correct format of S 18 guidance is a vital tool for encouraging partnership working and promoting improvements in health and safety outcomes.

Objectives of the review of the Section 18 standard

- To reconsider the policy, content, substance and weight of S 18 guidance in order to reflect and affect the new and developing partnership.
- To produce guidance that reflects:
 - Developing partnerships
 - The impact of the Hampton Review and establishment of the Local Better Regulation Office
 - Equivalent status of LA's and HSE
 - Best use of joint resources
 - Priorities of LA's and the HSC workplace strategy
 - Contribution to local community health and well-being
 - Implementation of targeted, transparent, proportionate, consistent and accountable enforcement
 - Introduction of an intervention strategy and *Sensible health and safety*
 - Use of the Enforcement Management Model
 - New mechanisms for information gathering
 - Ability for use as an audit tool and appropriate sanction arrangements
 - Relationship with other Performance Indicators (eg CPA and BVPI 166)
 - "Adequate arrangements" needed for both LA's and HSE
 - Information flowing from other strategic programmes and projects
 - Need for clear and effective communication
 - Engagement of our partners
 - Need for flexibility and sustainability

Feedback on review of HSC's Section 18 HSWA Guidance

There was support from workshop delegates for:

- a prescriptive and mandatory standard setting out the 'adequate arrangements' (e.g. competent inspectorate, enforcement policies, etc) to be adopted by a health and safety enforcing authority. Some 94% of delegates thought it should apply to both LAs and HSE, whilst recognising the differences between the two EAs. The majority of delegates preferred the revised draft standard that focused more specifically on partnership working and outcomes, and less on process.
- the principle that the standard should focus on how EAs will 'make a difference' and have an impact on improved health and safety outcomes.
- a clear focus on the key national priorities together with some local flexibility to support local priorities. There was recognition of the differences between HSE and LAs with regards to their national, regional and local focus.
- regular independent auditing with sanctions and support available to deal with poor performing authorities. They considered that this would help raise the profile of health and safety enforcement and challenge those LAs who were failing. There was significant support for the establishment of an external audit function (of HSE/LA representatives) with greater independence from HSE and strong support for a totally independent audit organisation e.g. Local Services Inspectorate (Audit Commission). Many delegates wanted the assessment of their performance clearly linked to national and local indicators and outcomes.
- addressing the issue of capacity, with many delegates wanting a clear statement of the resource needed to carry out their duties.
- the need to raise the profile of the health and safety service with politicians. This was seen as the vital precursor to securing and improving resources for health and safety enforcement.
- the standard to be consistent with the emerging Better Regulation Executive (and Local Better Regulation Office) frameworks and the recent Hampton Review on LA regulatory services.

Annex 5

Outline of the allocation of enforcement responsibilities between HSE and LAs

1. The Health and Safety (Enforcing Authority) Regulations (EA Regs) 1998 allocate responsibilities for enforcement of health and safety either to LAs or HSE according to the main activity of the premises as outlined below:
2. A number of enforcement issues have arisen since the introduction of the EA Regs and these can be divided into four areas:
 - **Conflict of Interest Issues** – generally arise where LAs retain some management control of LA enforced activities e.g. Leisure Centres.
 - **HSE/LA Boundary Issues** – occur in the main because allocation is based on main activity and activities within premises rather than for example aligned with the management control e.g. white goods supply chain and peripatetic workers.
 - **General Allocation Issues** – where activities are allocated to either LA or HSE by the EA Regs there are often valid reasons to question the original allocation e.g. should car parks within airports be LA enforced if other car parks are HSE enforced?
 - **Mismatch of Enforcement Effort Issues** - these relate to the different ways LAs and HSE respond to issues of risk and enforcement e.g. the % of accident investigations undertaken.
3. Work is underway to review these issues and to explore options for improvements to the existing division of enforcement responsibility between LAs and HSE that reflects the Partnership. A number of pilot projects are underway including the flexible warranting exercise described in Annex 6.

<i>Local authority health and safety regulatory officers</i>	<i>HSE inspectors</i>
■ Shops	■ Factories
■ Hotels	■ Farms
■ Restaurants	■ Building sites
■ Leisure activities	■ Nuclear installations
■ Nurseries	■ Mines
■ Club buildings	■ Railways (until 2006)
■ Museums	■ Schools/colleges
■ Places of worship	■ Fairgrounds
■ Sheltered accommodation/care homes	■ Gas/electricity/water systems
■ Offices (except government offices)	■ Hospitals
■ Pubs and clubs	■ Nursing homes
■ Warehouses	■ Government premises
■ Banks/building societies	■ Transport systems

Feedback on review of Health and Safety (Enforcing Authority) Regulations

4. There was support from workshop delegates for:

- a combination of fine-tuning of the regulations together with greater partnership working.
- the idea of 'flexible warranting' . In a “show-of-hands” poll, 83% of all delegates said they would adopt the use of “flexible warranting” ¹with some seeing it as an opportunity to give improved job satisfaction, provide better responses to local communities, deal with reactive work and resolve some of the boundary issues. (see Annex 6 for further details of the pilot schemes)
- the creation of a new single enforcing authority, in a “show-of-hands” poll. This very much reflects a change of opinion following the implementation of the Partnership.

5. There were concerns from workshop delegates that:

- roles in public safety, competency, training, communication channels, commonality of procedures and standards, the need for clear and possibly prescriptive guidance, a fear of “dumping activity on LAs” and the need for sufficient resources to take on any additional workloads needed to be addressed .
- overall, flexible warranting was not seen to provide a single answer to the EA Regs problems but rather to be used as another partnership tool.

Annex 6

Notes on the 'flexible warranting' schemes

Basis of the scheme

1. To allow LAs to appoint suitably qualified HSE inspectors to undertake work within the LAs field of responsibility and HSE to appoint suitably qualified LA inspectors to undertake work in the HSE field of responsibility.

Objectives of the pilot schemes

2 The objectives of the schemes are to:

- Increase the flexibility and responsiveness of health and safety regulators to situations of significant risk
- Remove inefficiencies in administration that result from the prescription of the Enforcing Authority Regulations
- Improve communication and cooperation between health and safety regulators
- Facilitate the collective use of resources to increase the effectiveness of the regulatory system

Pilot schemes

3. Are currently operating in:

- Hampshire and Isle of Wight
- Yorkshire and the North East
- Western Isles and Central Fife and Tayside

Annex 7

Common Performance Framework

Introduction

1. Statement 6 of the Statement of Intent outlines a commitment to "developing arrangements for monitoring and auditing the work of enforcing authorities which properly reflect the status of HSE and LAs as partners".

Activity to Date

2. A number of different approaches and methods for comparing LA and HSE performance have been considered and piloted. This has included:

- Application of the existing HELA audit protocol and scoring system to measure compliance with Section 18 HSWA and identify good practice. A joint HSE/LA audit exercise was carried out in Wales during 2004/05 and a detailed report has been produced. This framework is the one primarily used for LA audits to date;
- Regulatory decision making (RDM) peer review exercise for specific areas, e.g. complaint and incident investigation carried out by HSE and LAs;
- Other benchmarking tools used by LAs, e.g. Hampshire and Isle of Wight quality matrix;
- Commitment and contribution to the LA/HSE Partnership, HSC's workplace strategy, delivery of regional targets and outcomes, etc;

Feedback on review of Common Performance Framework

3. There was support from workshop delegates for:

- a combination of methods with a greater focus on the measurement of performance against S18 compliance and outcomes.
- the principle that the framework should contribute to the delivery of improved health and safety outcomes (e.g. injury, disease and ill health reduction, etc.) and the safety, health and economic vitality of local communities, etc.
- the measurement of outcomes to be supported by the linked inputs (e.g. contribution to FIT3, partnership working), outputs (e.g. business training events) and interim and intermediate outcome measures (e.g. behaviour change, improved compliance).
- improved recognition and dissemination of good enforcement practice.
- the proposal that any framework should be consistent with emerging LA regulatory frameworks, e.g. Local Better Regulation Office and Hampton Review, and compatible with other performance frameworks (e.g. CPA, Best Value).
- any new framework that promoted consistency between LAs and HSE and between LAs, and contributed towards continuous improvement in service delivery.

Impact of the Local Better Regulation Office (LBRO)

4. The recent November Pre-Budget announcement about the establishment of the LBRO by 2009 will have a significant impact on LA health and safety enforcement. The remit of LBRO presently covers LA Environmental Health (EH) and Trading Standard (TS) services. It is working with the appropriate regulators, LA representative bodies and LAs to establish the regulatory priorities for EH and TS, together with a more integrated framework for measuring performance. HSE therefore aims to promote to LBRO its experience of working in partnership with LAs to improve delivery, and welcomes the opportunity to work with LBRO on clear mechanisms and appropriate guidance to assess performance.

5. Work on the development of a common performance framework is being reviewed in the light of LBRO activity to develop a regulatory performance framework for LA Environmental Health and Trading Standards services.