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|------------------------------|-------------------------------|
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| Exempt Material: None        | Type of Paper: Above the Line |

### Local Government Panel

#### Section 18 Standard

Paper by Gerry Kasprzok (HSE-LAU)  
Cleared by Phil Scott (HSE) and Mark Du Val (LACoRS)

#### Issue

1. The Section 18 Standard "Making a Difference .....", which will apply to both LAs and HSE's FOD, has recently been agreed by HSC (see <http://www.hse.gov.uk/aboutus/hsc/meetings/2008/120208/c12.pdf> for paper). During its discussions HSC wished to include the Standard on the agenda for the next meeting of the LGP.

#### Background

2. Enforcing authorities (EAs) will be given three years to comply with the new S18 Standard. This is for two reasons. Firstly, to develop the supporting information such as the competences framework, priority planning system etc. and secondly, to allow EAs time to embed these new developments in to their individual organisations and cultures.
3. The HSC endorsed this timescale as a common sense approach so long as enforcing authorities made full use of the time available to them rather than leaving compliance until 2011 and also suggested that LACORS and HELA should explore the scope for strengthening the process for reviewing compliance by building in external challenge and agreeing milestones for compliance.
4. HELA discussed these matters at their last meeting and agreed:
  - Agreed a Draft Action Plan that includes a number of milestones. (See Appendix 1)
  - To set up a Tank and Finish Group to develop a mechanism for providing continued assurance to HELA, HSC/E & LGP that enforcing authorities are making adequate arrangements for enforcement in line with the new S18 Standard - "Making a Difference....." that takes into account current developments, advice and practice on performance frameworks. (See Appendix 2 for Draft Terms of Reference)
5. The S18 Standard (11 pages) and a brief synopsis of the HSC meeting (1 page) are attached at Appendices 3 and 4 respectively for completeness.

#### Recommendations

LGP is invited to:

- a) consider the Draft Action Plan at Appendix 1 especially in relation to milestones
- b) discuss ensuring compliance with the S18 Standard across all EAs.

#### Contact

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## Appendix 1

| <b>Draft Action Plan</b> |  |  |             |
|--------------------------|--|--|-------------|
| <b>When</b>              | <b>What</b>  | <b>How</b>   | <b>Who</b>  |
| Mar 08                   | Confirm milestones   | Discussion/paper   | HELA, LGP   |
| Apr 08                   | Letter from Joint Chairs and "Publish" S18 Standard  | HELex/LACoRS   | LAU         |
|                          | "Publish" S18 Standard   | Via Website  |             |
|                          | Toolkits for Commitment, Priorities and Planning and Targeting, Enforcement Policy and Decisions and Sensible Risk Management completed  | Made available via Website                                 | LAU         |
|                          | Comms Plan Tasks Completed   |  | LAU         |
|                          | Set up Task and Finish Group to develop/review self assessment/peer and external challenge   | T&F from LAU, LACoRS, LAs, HSE, etc                        | HELA        |
| May 08 – Sep 08          | New Executive undertaking re continuing to apply Standard to FOD   | Report to New Executive Board                              | LAU         |
| May 08 – Sep 08          | Review HSE centralised information on compliance/identify local information needs  | Locate key documents and evidence of compliance.           | LAU, FOD HQ |
| May 08 – Sep 08          | Undertake and analyse self assessment sample – 10% of LAs based on upper/lower quartiles of H&S enforcement activity indicators - 5 HSE FMUs randomly selected.<br>Target 50% full compliance and 50% part compliance  | Voluntary requests to specific LAs/FMUs                    | LAU, CoSaS  |
| Sep 08 – Mar 09          | Amend all supporting information in light of any new developments e.g. LBRO, BERR  | Await developments and amend accordingly                   | LAU         |
| Oct 08                   | Report to Policy Forum/HELA on Progress – HELA to issue subsequent advice as necessary   | Report to/from Policy Forum and HELA                       | LAU, HELA   |
| Mar 09                   | Competences Framework complete   | Prototype currently on trial and being piloted during 2008 | SITNA Board |
| Apr 09                   | Toolkits for Capacity , Competent Inspectorate, Management Arrangements, Information Systems and Performance Management completed  | Made available via HEx                                     |             |
| May 09 – Sep 09          | Undertake and analyse self assessment sample - 10% of LAs based on upper/lower quartiles of H&S enforcement activity indicators - 5 HSE FMUs randomly selected.<br>Target 70% full compliance and 30% part compliance  | Voluntary requests to specific LAs/FMUs                    | LAU, CoSaS  |
| Oct 09                   | Report to Policy Forum/HELA on Progress - HELA to issue subsequent advice as necessary   | Report to Policy Forum and HELA                            | LAU, HELA   |
| Mar 10                   | Priority Planning Guidance complete  |  | HELA T&F    |
| Apr 10                   | Toolkits for Governance, Sensible Risk Management, Complaints and Working Together completed   | Made available via HEx                                     | LAU         |
| May 10 – Sep 10          | Undertake and analyse self assessment sample - 10% of LAs based on upper/lower quartiles of H&S enforcement activity indicators - 5 HSE FMUs randomly selected.<br>Target 95% full compliance and 05% part compliance? | Voluntary requests to specific LAs/FMUs                    | LAU, CoSaS  |
| Oct 10                   | Report to Policy Forum/HELA on Progress - HELA to issue subsequent advice as necessary   | Report to Policy Forum and HELA                            | LAU, HELA   |
| May 11 - Sep 11          | Undertake and analyse self assessment sample - 10% of LAs based on upper/lower quartiles of H&S enforcement activity indicators - 5 HSE FMUs randomly selected.<br>Target 100% full compliance.                        | Voluntary requests to specific LAs/FMUs                    | LAU, CoSaS  |

## HELA Task and Finish on monitoring compliance with S18 Standard

### Draft Terms of Reference

#### **Aim**

To develop a mechanism for providing continued assurance to HELA, HSC/E & LGP that enforcing authorities are making adequate arrangements for enforcement in line with the new S18 Standard - "Making a Difference....." that takes into account current developments, advice and practice on performance frameworks.

#### **Terms of reference**

- To develop a mechanism to give continued assurance that enforcing authorities are making adequate arrangements for enforcement in line with the new S18 Standard and its supporting information.
- Take account of current developments, advice and guidance including:
  - Local Government White Paper – Strong and Prosperous Communities
  - LACoRS' Peer Challenge Process and Self Assessment Framework
  - Other performance frameworks e.g. Foods Standards Agency/LBRO/HSE/LA
  - Any other considerations
- Consider the use of external challenge to strengthen the mechanism
- Consider the resource implications of introducing a mechanism.
- Consider how such a mechanism would be consulted upon, implemented and reported.
- To report back to HELA by October 2008 with options.

#### **Membership**

LAU, LACoRS, LACoRS Policy Forum, HSE, LAs, CIEH, FSA, LBRO

# ***Making a difference.....***

## **The Standard for Health and Safety Enforcing Authorities**

**Draft February 2008**

# Introduction

The Health and Safety Executive (HSE) and Local Authorities (LAs) are the principal Enforcing Authorities (EAs) for Health and Safety at Work etc Act 1974 (HSWA) in Great Britain.

The primary purpose of the HSWA is to control risks from work activities. The role of the EAs is to ensure that duty holders manage and control these risks and thus prevent harm to employees and to the public.

HSE and LAs both have a duty to 'make adequate arrangements for enforcement' under Section 18 of HSWA. In complying with their duties under section 18, EAs are required to follow the HSC Enforcement Policy Statement (EPS) on the purpose, method and principles of enforcement.

The Section 18 Standard adds to the EPS, setting out the broader requirements for EAs when complying with their duty to make 'adequate arrangements for enforcement'. It applies to LAs and to HSE when carrying out its functions undertaken by Field Operations Directorate (FOD). EAs are legally required, from 1<sup>st</sup> April 2008, to work towards compliance with the principles and standards set out in the following pages. From 31<sup>st</sup> March 2011, compliance is mandatory. The Annex sets out in more detail the legal status of the Standard. Like the EPS, it acts both as a HSC direction to HSE under S11(4)(b) and as HSC guidance to LAs under S18(4)(b). The document meets the relevant regulator requirements of the Department for Business Enterprise & Regulatory Reform's Regulators' Compliance Code and 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 recognises that "partnership is the way HSE and LAs do business" and reflects the following Statement of Intent agreed between the HSC, HSE and LA representative bodies:

*'LAs and HSE, working jointly and in partnership locally, regionally and nationally, to a common set of goals and standards, committed to focusing resources on agreed health and safety priorities. The aim is to minimise harm to those in the workplace or those affected by workplace activities, and contribute to the health and safety and well-being of the local community'*

The e-links shown within this document form essential support to the standard and are intended to provide up to date guidance and information to EAs on their legal duties.

The following pages set out for Enforcing Authorities:

- the **principles** on which the standard is based
- the **standard** in detail

# Principles for Enforcing Authorities

## □ To “make it happen” every EA shall .....

- set out their commitment priorities and planned interventions. [MIH1]
- put into place the capacity, management infrastructure, performance management and information systems required to deliver an effective service and to comply with their statutory duties. [MIH2]
- operate systems to train, appoint, authorise, monitor, and maintain a competent inspectorate. [MIH3]

## □ To “do it right” every EA shall .....

- use interventions, including enforcement action, in accordance with their enforcement policy and within the principles of proportionality, accountability, consistency, transparency and targeting. [DIR1]

## □ To “work together” every EA shall .....

- work within their own organisation, in partnership with other EAs and with other regulators and stakeholders to make best use of joint resources and to maximise their impact on local, regional and national priorities. [WT1]
- actively contribute to liaison, policy and governance arrangements at a local, regional and national level. [WT2]

## To “sell the story” every EA shall .....

- promote sensible risk management .[STS1]

# The Standard for Enforcing Authorities

## make it happen *systems & infrastructure*

Every EA shall set out their commitment, priorities and planned interventions. [MIH1]

This means:

### **Commitment**<sup>MIH 1.0</sup>

EAs shall make a clear statement, endorsed by senior management, on their commitment to improving health and safety outcomes.

### **Priorities and Planning**<sup>MIH1.1</sup>

Every EA shall set out its priorities and plan of interventions for the current year. These should take into account:

- HSC's priorities
- national & regional priorities, targets and plans
- locally derived objectives
- relevant guidance and policies.

### **Targeting Interventions**<sup>MIH1.2</sup>

EAs shall target their interventions:

- to maximise their impact in improving health and safety outcomes
- on securing action by duty holders to manage and control the health and safety risks of their work activities
- on the duty holders who are best placed to control the risks whether they be employers or others
- on other organisations and stakeholders that can influence risk reduction
- on activities that give rise to serious risks or where the hazards are least well controlled
- to stop those that seek economic advantage from non-compliance (e.g. rogue traders)
- in accordance with national guidance on interventions and priority programmes
- in accordance with local, regional and national programmes

[e-link](#)

**Every EA shall put into place the capacity, management infrastructure, performance management and information systems required to deliver an effective service and to comply with their statutory duties. [MIH2]**

This means:

### **Capacity** <sup>MIH2.0</sup>

EAs shall have the managerial, operational, administrative and political resources, both staff and infrastructure, to contribute to improving health and safety outcomes. The capacity required is dependent on a variety of factors that includes industry type, staff competence and the range and type of interventions undertaken.

EAs shall assess whether there is sufficient capacity within the EA to undertake their statutory duties.

Every EA shall have sufficient capacity to:-

- make adequate arrangements for enforcement in accordance with their enforcement policy
- develop, deliver and monitor their planned interventions
- enable effective working between HSE and LAs and with other regulators and stakeholders.

EAs shall seek opportunities to enhance their capacity e.g.

- working across geographical areas (e.g. delivering County wide services)
- delivery of common services (e.g. accident investigations)
- utilisation of resources, systems and expertise from other organisations to provide services (e.g. delivery of publicity material or use of another regulator's inspectorate )
- adopting best practice

### **Management Infrastructure** <sup>MIH2.1</sup>

Every EA shall have an effective management infrastructure in place for developing, delivering, monitoring and reviewing their interventions.

This will include:-

- management reporting arrangements
- systems of control from management to operational and administrative staff
- routes for communication throughout the organisation and between operational & administrative staff and with policy & decision makers
- definitions of work roles and responsibilities for delivering effective services
- arrangements to support, supervise and coach staff to retain and develop their experience & competence

## **Performance Management** <sup>MIH2.2</sup>

Every EA shall have systems in place to measure, evaluate and report its performance in achieving its planned interventions, policies, targets and outcomes.

These systems shall include:-

- regular review of activity by managers and policy makers on progress and performance against work plans, performance indicators, milestones and targets.
- published standards for service and performance
- regular reporting of the EAs performance

## **Information Systems** <sup>MIH2.3</sup>

EAs shall have systems that enable them to:

- monitor and review progress towards local, regional and national policies, priorities, targets and plans
- monitor their activity including type of interventions, complaints, enforcement and other performance indicators
- inform policy and direct operational activity
- collate and analyse current data
- secure the benefits from the compatibility of data collection and data management systems
- manage and record information for regular statistical returns
- interface and upload information with the HELA Extranet
- share data with other organisations and within their own organisation to minimise information requests to businesses
- involve businesses in vetting data requirements and form design
- record accurate information about premises including assessments of the hazard and risk of the activities taking place in order to support the prioritisation of interventions

[e-link](#)

**Every EA shall operate systems to train, appoint, authorise, monitor, and maintain a competent inspectorate. [MIH3]**

This means:

## **Competent Inspectorate** <sup>MIH3.0</sup>

Competence is the ability to undertake responsibilities and perform activities to a recognised standard.

EAs shall have documented policy and procedures that state:-

- the system for the appointment and authorisation of staff engaged in health and safety enforcement duties (including staff from other regulators)
- the standards of competence required for staff who carry out and staff who support, health and safety enforcement (including the staff of other regulators)
- the arrangements to ensure that health and safety enforcement staff (including the staff of other regulators) attain and maintain their competence

[e-link](#)

# do it right

## Enforcement Policy

Every EA shall use interventions, including enforcement action, in accordance with their policy and within the principles of proportionality, accountability, consistency, transparency and targeting. [DIR1]

This means:

### Enforcement policy <sup>DIR1.0</sup>

EAs shall:

- have an enforcement policy that follows the HSC Enforcement Policy Statement
- review their enforcement policy from time to time in consultation with their stakeholders (including partners, other EAs, employers, employees and their representatives)
- ensure that the enforcement policy is formally endorsed by the enforcing authority
- make the enforcement policy available to the public and to duty holders

EAs shall follow the HSC Enforcement Policy Statement and include the following in their enforcement policy:

- the purpose and method of enforcement
- the principles of proportionality, targeting, consistency, transparency and accountability
- the management of investigations, prosecutions and work related deaths

### Enforcement decisions <sup>DIR 1.1</sup>

EAs shall ensure that:

- enforcement decisions are taken in accordance with their enforcement policy
- arrangements are in place to monitor and review decisions that have departed from normal procedure
- the appropriate enforcement models ( e.g. Enforcement Management Model) are applied consistently to enforcement decisions
- they follow relevant guidance and direction where appropriate before taking enforcement action

### Complaints <sup>DIR1.3</sup>

EAs shall provide:

- procedures for dealing with complaints against the EA that are accessible to business, the public, employees and other interested parties.

[e-link](#)

# work together

## *partnership*

**Every EA shall work within their own organisation, in partnership with other EAs and with other regulators and stakeholders, to make best use of joint resources and to maximise their impact on local, regional and national priorities. [WT1]**

*This means:*

### **Work in partnership**<sup>WT1.0</sup>

EAs shall seek opportunities to work within their own organisations and with other regulators and stakeholders to develop:

- priorities, targets, interventions and service delivery methods
- joint planning, joint work programmes and joint training
- the most effective use of resources and funding
- cross administrative boundary working
- advice and guidance
- publicity, campaigns and communications
- best practice
- coordinated enforcement activity
- sharing intelligence, data and information
- consistency and effectiveness
- new services
- the response to reactive demands
- the best outcomes
- the delivery of justice
- safer, stronger and healthier communities

### **Governance**<sup>WT1.1</sup>

EAs shall have arrangements in place to ensure:

- their views are represented within liaison, policy and governance groups at local, regional and national levels
- they provide information to politicians, senior managers and practitioners on the decisions of such groups and on their work as regulators

[e-link](#)

# sell the story

*promoting sensible risk management*

**Every EA shall promote sensible risk management. [STS1]**

This means:

## **Sensible Risk Management** <sup>STS1.0</sup>

EAs shall promote the principles of sensible risk management including:

- ensuring that workers and citizens are properly protected
- providing overall benefit to society by balancing benefits and risks, with a focus on controlling real risks – both those which arise more often and those with serious consequences
- enabling innovation and learning not stifling them
- ensuring that those who create risks manage them responsibly and understand that failure to manage real risks responsibly is likely to lead to robust action
- enabling individuals to understand that as well as the right to protection, they also have to exercise personal responsibility

[e-link](#)

## **Annex: legal status of the Standard and timetable for its application**

Like the EPS, the Section 18 Standard applies to all LAs and to HSE in relation to the enforcement activities of its Field Operations Directorate (FOD).

The S18 Standard sets out the requirements with which HSE and LA's will eventually be obliged to comply in making 'adequate arrangements for enforcement'. It has been given legal effect both as a HSC direction to HSE under section (4)(b) of the Health and Safety at Work Act 1974 (HSWA) and as HSC guidance to LAs under section 18(4)(b) of HSWA (section 18 guidance). HSWA requires LAs to perform their duties as enforcing authorities in accordance with Section 18 guidance and requires HSE to give effect to any directions issued to it by the HSC. However, although the Standard will have effect from 1<sup>st</sup> April 2008, it does not require immediate full compliance with its requirements. Instead, both LAs and FOD are required:

- from 1<sup>st</sup> April 2008, to work towards compliance with the requirements of the Standard, and
- from 31<sup>st</sup> March 2011, to comply fully with all the requirements of the Standard.

Following the expected merger of HSC and HSE, the Standard will remain in effect and EAs will continue to be legally obliged to work towards compliance with its requirements, and to comply fully by March 2011. In relation to LAs, it will continue in force as section 18 guidance as though issued by the new Executive; in relation to HSE, the new Executive will publicly undertake to comply.

HSE and Local Authority Liaison Committee (HELAL) will provide further advice to enforcing authorities on achieving full compliance against the S18 Standard by 31<sup>st</sup> March 2011.

Synopsis of HSC Meeting 12<sup>th</sup> February 2008

|        |  |
|--------|--|
| 5      | <b>Agenda Item Five: Revised Guidance to enforcing authorities under s18 (HSC/08/12)</b>   |
| 5.1    | Justin McCracken introduced the paper and made the following comments: <ul style="list-style-type: none"> <li>a. The paper proposed the introduction of new draft guidance on arrangements for health and safety enforcement.</li> <li>b. The guidance was part of the local authorities and HSE Working Together programme and applied to HSE as well as local authorities. LACORS were also supportive of the guidance</li> <li>c. A three year lead in period for the guidance has been agreed to allow local authorities time to put the measures set out in the guidance in place.</li> <li>d. HELA will play a key role in ensuring local authorities take the necessary steps to ensure compliance with the guidance.</li> </ul>  |
| 5.2    | The Commission thanked Justin and made the following comments in response: <ul style="list-style-type: none"> <li>a. The Commission welcomed the guidance as a well written piece that reflected good practice.</li> <li>b. The Commission also endorsed the timescale for compliance as a common sense approach so long as local authorities made full use of the time available to them rather than waiting to ensure compliance until 2011. For this reason the Commission suggested that discussion with LACORS and HELA should explore the scope for milestones for compliance being agreed.</li> <li>c. While welcoming the approach the Commission did raise concerns that it was only enforcers that were consulted during the development of the guidance.</li> <li>d. The Commission agreed that to strengthen the process for reviewing compliance with the guidance that rather than relying only on self-audit that peer review and external challenge should be built into the process.</li> <li>e. The next meeting of the Local Government Panel should discuss the above and related issues.</li> </ul> |
| 5.3    | The Chair thanked Justin and LAU for their work in this area and confirmed that the Commission were happy to endorse the guidance. The Commission wish to see milestones for progress towards full compliance with the new standard established and want the findings of self assessments and peer review/audits to be made public.  |
| ACTION | Include the S18 Standard on the agenda for the meeting with the LGP.   |