

## Section 18 Standard Toolkits

### *Make it happen...*

#### Capacity Toolkit

The Section 18 Standard requires every Enforcement Authority (EA) to:

- have the operational, managerial, administrative, legal and political resources, both staff and infrastructure, to contribute to improving health and safety (H&S) outcomes;
- assess whether there is sufficient capacity within the EA to undertake their statutory duties;
- deliver an effective service.

#### Basic requirements

To meet the Standard every EA shall have sufficient capacity to:

- make adequate arrangements for enforcement in accordance with their enforcement policy;
- develop, deliver and monitor their planned proactive interventions;
- respond to reactive complaints, requests for service and formal RIDDOR notifications and take appropriate action based upon related risk;
- enable effective working between HSE and local authorities (LAs) and with other regulators and stakeholders;
- develop sufficient evidence to provide a basis for action.

EAs shall seek opportunities to enhance their capacity, for example by:

- working across geographical boundaries (eg delivering county-wide services);
- cross-boundary delivery of common services (eg accident investigations);
- utilisation of resources, systems and expertise from other organisations to provide services (eg delivery of publicity material or use of another regulator's inspectorate);
- adopting best practice.

#### Aims and objectives

The main aims of this mandatory guidance are to:

- enable EAs to determine whether their current level of resource provision and related capacity is at least compliant with the mandatory requirement to 'make adequate arrangements for enforcement';
- ensure that EAs that currently have a level of capacity/resources that complies with the mandatory requirement to 'make adequate arrangements for enforcement' are able to subsequently maintain a compliant level of capacity and resource;
- ensure that EAs that currently do not have a level of capacity/resources that complies with the mandatory requirement to 'make adequate arrangements for enforcement' have a benchmark against which they may secure a compliant level of capacity and resource.

## Key points

LAs and HSE Field Operations Division (FOD) have EA responsibility for more than a million workplaces each nationally. In order to effectively address the national strategic requirements (*see below*), substantively contribute the national priority of year-on-year reductions in work-related injury and ill health rates and provide adequate protection for employees and local/regional communities, it is essential that **all** enforcing authorities '**make adequate arrangements for enforcement**' and provide an '**effective service**'.

The key principles relating to the prevention and protection of the health and safety of workers are defined in the 1989 European Union Framework Directive (89/391/EEC). In conjunction with this directive an EU Committee of Labour Inspectors documented 'Common Principles for Labour Inspection' in relation to Health and Safety in the Workplace.

The Common Principles for Labour Inspection stipulate that Member States must develop and maintain institutions (enforcing authorities) and mechanisms for the enforcement of EU law. These institutions (EAs) should be **sufficiently resourced** to discharge the duties expected of them by national and regional strategies. Hence, the requirements of Section 18 are underpinned by European Law

## Strategic requirements and national priorities

The strategy document 'The Health and Safety of Great Britain – be part of the solution',<sup>1</sup> published in June 2009, contains several cross-cutting messages that directly relate to the mandatory requirement for EAs to make adequate arrangements for enforcement.

The key strategic messages central to capacity are that the strong co-regulator partnership between HSE and LAs is integral to the strategy and subsequent delivery. Everybody (including EAs) needs to play their part in delivery, as it is **delivery** that will count.

Progress with further reducing the injury and ill health rates has stalled and there is pressure to find ways of beginning again the process of improvement. Renewed momentum to improve H&S performance is also required in response to a wider range of risks.

Ultimately, everyone has a role in bringing about improvements in H&S performance, working together towards a common set of goals. For this to become reality, each stakeholder within the H&S system (including EAs) has to understand and better execute their role.

The Section 18 guidance issued in 2002, forerunner of the Section 18 Standard, recognised that the priorities of LA enforcing authorities are affected by local issues and duties to respond to the needs of local communities and deliver a range of services. As such, the guidance was framed in a manner that gave each LA the latitude and autonomy to responsibly determine the level of H&S enforcement resource.

Whilst the majority of LAs determined an adequate level of enforcement resource, a small number of authorities may have determined or have put in place a level of enforcement resource which may be insufficient to comply with the mandatory requirement to 'make adequate arrangements for enforcement'. This may be compounded by the fact that LA regulatory services increasingly face tighter budget settlements, which put pressure on resources and have led to reductions in resources in real terms. In some authorities this has resulted in reduced levels of proactive inspection and limited reactive complaint/incident investigation. In some cases, this could lead to a cessation of all such activity temporarily or semi-permanently.

EAs faced with budget pressures and carrying out related reviews of service provision must recognise that the regulatory function of H&S enforcement is underpinned by a statutory requirement to make 'adequate arrangements for enforcement'. Hence great care should be taken in ensuring that each element that equates with making adequate arrangements, as set out below, is considered in detail in relation to the size and risk profile of the authority. Any authority knowingly delivering inadequate arrangements must immediately reassess their service and put in place corrective measures.

It is essential that senior managers and political/policy decision makers within EAs understand that in order to:

- provide the necessary protection for employees and their local community;
- secure the required contribution to the national strategic priorities and related targets concerning reduction of workplace injury and ill health rates;
- accord with the principles of the Hampton Report<sup>2</sup> and Better Regulation Executive report entitled 'Improving Outcomes from Health and Safety';<sup>3</sup>

there must be the required commitment to put in place adequate arrangements for enforcement and deliver an effective service which complies with their statutory duties.

### **Adequate arrangements for enforcement**

Central to each EA making adequate arrangements for enforcement is the provision of the necessary managerial, political **(1)**, operational, legal and administrative **(2)** resources. Prior to making a determination of adequate operational enforcement arrangements, it is necessary that each EA has:

- senior managerial and political/policy decision makers with sufficient understanding of, and commitment to, H&S enforcement to support and contribute to the delivery of the service through a statement of commitment to improve H&S outcomes, an intervention plan and an enforcement policy;
- a premises database containing dutyholder premises details and with the facility to store incident, investigation and service requests data, which is regularly updated in order to maintain accuracy (see [Information Systems Toolkit](#));
- the necessary tools, information, procedures and other related resources required to provide an effective service.

The elements that equate with making 'adequate arrangements for enforcement' and provision of an 'effective service' (that should be included in an EA's intervention plan) and which should be considered in any assessment of adequate operational resources include:

- a range of risk-based interventions **(3)** such as planned general inspections, enforcement initiatives and visits to new premises in accordance with the relevant [Priority Planning Guidance](#);
- risk-based investigation of injuries, diseases and dangerous occurrences **(4)** in accordance with the relevant [Incident Selection Guidance](#);
- risk-based investigation of complaints and other requests for service **(5)**;
- revisits to check compliance **(6)** within a time period that is proportionate to the risks associated with the matters of evident concern or other non-compliance under consideration;
- role as Statutory Consultee re: 'Public safety' under Licensing Act **(7)** with respect to consultations, outdoor events and safety issues arising at existing licensed premises;
- local, regional and national priorities **(8)**;
- advice, training and advisory activity **(9)**, including dutyholder awareness-raising events;
- ability to effectively work in partnership **(10)** with respective co-regulator (HSE/LAs) and other regulators;
- securing justice **(11)**.

The amount of financial and human resources required by each EA and level of related enforcement activity should be proportionate to the risk profile of the authority, taking into account the numbers of and types of dutyholders and the risks associated with the work activities of each. Such considerations should be central to any assessment of sufficient capacity.

EAs would be considered 'non compliant' with the requirement to make 'adequate arrangements for enforcement' should they fail to put in place sufficient resources in relation to each of the above elements. The Section 18 Standard and related toolkits is a baseline benchmark which EAs should not operate below.

Following each EA's determination of adequate operational enforcement arrangements, the following resources should be determined and put in place:

- Sufficient numbers of authorised and non-authorised operational staff compliant with the requirements of the [Competent Inspectorate Toolkit](#).
- Sufficient administrative and legal support proportionate to each authority's enforcement activities.
- The facility to provide additional resources in order to respond to unforeseen demands on the service or short-term staffing issues. This may be facilitated, where appropriate, by sharing resources or enforcement tasks via a cross-boundary arrangement.
- Senior managers and political/policy decision makers to ensure adequate arrangements for enforcement and an effective service are maintained when faced by subsequent budgetary or other resource pressures.
- Where a determination identifies inadequate arrangements for enforcement, senior managers and political/policy decision makers should ensure appropriate retrospective action is taken.

The overall determination of an effective service with sufficient capacity that makes adequate arrangements for enforcement will be a combination of assessing each of the operational resource requirements in detail, coupled with the related consideration of the managerial, political, legal and administrative resource requirements.

#### **(1) Managerial and political/policy decision makers**

Sufficient management and political/policy resources should be put in place to oversee health and safety enforcement in relation to:

- formulation and approval of a statement of commitment to improving H&S outcomes;
- formulation of an intervention plan concerning proactive interventions, including overseeing the production of targeted inspection lists and reactive investigations;
- overseeing the effective operation of a related premises and incidents/investigations/service requests database;
- implementation of the intervention plan;
- ensuring each EA's statement of commitment to improving H&S outcomes should contain a commitment to provide the necessary capacity and resources to deliver its priorities and plan of interventions for the current year;
- where necessary, senior managers and political/policy decision makers faced with resource pressures will need to demonstrate their commitment to improving H&S outcomes by ensuring adequate arrangements for enforcement are maintained;
- supporting enforcement staff and overseeing casework concerning formal enforcement action, including service of notices, formal cautions and potential prosecution cases;
- overseeing related monitoring systems concerning proactive interventions, reactive complaints, service requests and enforcement action;
- provision of an adequate post-qualification training budget in order to ensure the ongoing competency of enforcement staff. Consideration should also be given to the long-term sustainability of the enforcement function and funding of trainee enforcement officers, where appropriate in partnership with neighbouring authorities;
- monitoring of consistency between officers, authorities and enforcing agencies (including benchmarking and peer review).

#### **(2) Legal and administrative support**

The number of full-time equivalent enforcement staff as determined by the elements of an adequate operational enforcement service, above, should be supported by sufficient numbers of administrative and legal support staff, proportionate to the workload generated by those enforcement staff.

### **(3) A range of risk-based interventions**

With regard to planned inspections and interventions, EAs shall comply with the mandatory requirements of the [Priority Planning Guidance](#) and put in place sufficient resources and capacity to deliver the related numbers of inspections and interventions subsequently outlined in the authorities' intervention plan, either as a total number of proactive inspections/interventions or a related number of hours of officer contact time for each series of inspections/interventions. The underpinning requirement concerning interventions is for EAs to target resources at dutyholders posing the highest risks and inspect a sufficient proportion of the total number of premises.

Where the [Priority Planning Guidance](#) does not indicate a mandatory inspection interval, EAs should not interpret this to mean that such lower risk premises do not require an inspection, appropriate intervention or inclusion in the authority's intervention plan.

### **(4) Investigation of RIDDOR notifications**

With regard to accident investigations EAs shall comply with the mandatory requirements of the [Incident Selection Criteria](#) and put in place sufficient resources and capacity to ensure all incidents falling within the selection criteria are investigated.

### **(5) Investigation of complaints and requests for service**

All complaints and requests for service should be responded to and, where required, investigated, based upon the related risks of each case. In the absence of a dedicated toolkit concerning reactive complaints, EAs would not be considered to be making adequate arrangements for enforcement if they did not have sufficient resources in place to investigate complaints or service requests concerning:

- serious or significant personal injury, actual, possible or probable;
- serious\* or significant\*\* health effects, actual, possible or probable.

\* permanent, progressive or irreversible condition, or permanently disabling

\*\* non-permanent, reversible or non-progressive condition, or temporary disability

### **(6) Revisits to check compliance**

Over and above the mandatory inspection intervals outlined in the [Priority Planning Guidance](#), EAs will invariably become involved in circumstances involving matters of evident concern or serious/persistent breaches of statutory requirements which require a revisit within a time period that is proportionate with those matters or breaches. EAs should have related capacity to meet such requirements without having an adverse effect upon other proactive and reactive operational capacity requirements of this toolkit.

### **(7) Role as Statutory Consultee re: 'Public Safety' under Licensing Act**

EAs should have sufficient resources and capacity to consider and, where warranted, respond to consultations with respect to the Public Safety Licensing objective, which has a close association with H&S enforcement. Resources and capacity should extend to attendance of any dedicated Safety Advisory Group (SAG) meetings, monitoring, inspection and intervention at outdoor events and safety issues arising at existing licensed premises.

### **(8) Local, regional and national priorities**

All EAs are required to target resources at the most significant risks. Generally, this is facilitated through the interventions plan put together prior to each work year, based upon national, regional and local priorities. Whilst many emerging such issues can be accommodated in subsequent years' work plans, within existing resources and without impacting upon priority planning targets, there may be situations where emerging issues require attention without delay. Under such circumstances, EAs require a mechanism

whereby they can secure additional resources on a temporary basis. This includes situations where competent specialist resources may be required on a short-term basis to assist with an ongoing investigation or other such initiative.

#### **(9) Advice, training and advisory activity (including dutyholder awareness-raising events)**

EAs shall have sufficient capacity and resources to provide advice and guidance to dutyholders and respond to queries from employers, employees and the public. This may be via setting up a duty officer system to respond to complaints and queries, or dedicated technical/administrative staff that can capture the relevant points of a service request for subsequent response within a set service standard time. Where appropriate, authorities may also service this requirement with pre-prepared or subject-selected hard copy packs or CD-rom containing leaflets and pre-prepared information sheets and/or direct enquirers to the relevant areas of the HSE website or the LA's own website.

Adequate arrangements in this sense do not and should not require EAs to provide advice in the manner of a consultant or take on the role of approval body for certain mandatory safety management documents such as safety policies and risk assessments.

#### **(10) Effective partnership working with respective co-regulator (HSE or LA) and other regulators**

Since the 'Revitalising' H&S strategy in 2000 and the subsequent 'Statement of Intent' in 2004, subsequently replaced by the 'Statement of Commitment' (June 2009), partnership working has become standard operational practice for the majority of regional HSE FOD teams and local authority EAs. In conjunction with the [Work in Partnership Toolkit](#) all EAs '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'.

In practice, effective partnership working would involve:

- regular attendance at county H&S liaison group and related active contribution;
- joint work planning with respective co-regulators and inclusion of joint interventions and initiatives within the EA's intervention plan;
- although not mandatory, it is strongly recommended that each EA commits to operate within a flexible warranting scheme.

From time to time circumstances may arise whereby inspection resources reduce on a temporary or permanent basis due to either staff turnover, conflicting enforcement priorities within another regulatory function or, in extreme circumstances, reduction of the overall budget available. In order to maintain adequate arrangements for enforcement, this should not result in the H&S enforcement function being either suspended or solely focusing upon fatalities and major injuries for any length of time. EAs should seek to retain the resources allocated to address the above requirements and address short-term staff turnover issues via procurement of temporary/agency resources such that the resources dictated by the size and risk profile of the EA are maintained.

#### **(11) Securing justice**

In conjunction with the strategic requirement to take enforcement action to prevent harm and secure justice, when appropriate, against dutyholders who behave in a reckless manner, or where there has been a serious breach of duty, EAs should ensure they have capacity to carry out investigations, and related capacity where formal enforcement is required following an investigation (or inspection) to take further action, either in the form of a prosecution, formal caution, statutory notices or a formal letter.

Operational inspectors involved in investigations that may lead to formal enforcement action will, as a consequence, have less capacity to carry out proactive inspections and other reactive work, most notably when they are required to put together a prosecution report. EAs should factor into their intervention plan sufficient capacity to meet this requirement without having an adverse effect upon other proactive and reactive operational capacity requirements of this toolkit.

### **Determination of resource levels**

The sufficiency of resources and capacity required should be considered on the basis of amalgamating all of the above elements.

The underlying basis of determination of resources should be the amount of enforcement activity required in relation to each element as opposed to the current/available financial/human resources determining the amount of enforcement activity.

No single enforcement element should be considered in isolation or on a concurrent basis when determining overall resources required.

### **Further sources of information**

- 1 Strategy document 'The Health and Safety of GB – be part of the solution'  
<http://www.hse.gov.uk/strategy/document.htm>
- 2 Hampton report  
<http://www.hm-treasury.gov.uk/d/bud05hamptonv1.pdf>
- 3 BERR Report 'Improving Outcomes from Health and Safety'  
<http://www.berr.gov.uk/files/file47324.pdf>
- 4 EU Committee of Labour Inspectors documented 'Common Principles for Labour inspection' [[web link currently unavailable as of 18.09.09](#)]

## Capacity

### Are you compliant with S18's Capacity requirements?

To answer "yes" you should be able to demonstrate that your EA:

- **has sufficient managerial, political, legal and administrative capacity to comply with the S18 Standard. Such capacity includes the ability to assess current compliance with the Standard, put in place and maintain levels of resourcing compliant with the requirement to make adequate arrangements for enforcement, and ensure the intervention plan is delivered:**
  - Is there a recognised policy/decision maker who is accountable for delivery of your H&S enforcement service, ie lead councillor or portfolio holder?
  - Do senior managers and members have a sufficient understanding of the reasons behind the requirement to provide a health and safety enforcement service and how does the service equate with other regulatory functions?
  - Are senior managers and political/policy decision makers aware of the strategic need for all EAs to effectively contribute to the national priority concerning year-on-year reductions in work-related injury and ill health?
  - Are senior managers and political/policy decision makers committed to provide adequate protection for all employees of local/regional employers?
  - Are senior managers and political/policy decision makers committed to provide adequate protection for all members of the public within local and regional communities who may be affected by inadequate management of risk by local/regional businesses (eg those living adjacent to workplaces or those entering workplaces providing retail services, ie shopping centres, leisure centres, places of entertainment, licensed premises, sports stadiums etc)?
  - Does your EA have the ability to respond to short-term staff turnover issues via procurement of temporary/agency resources?
  - Do operational staff and managers meet regularly to discuss health and safety enforcement, eg LA Principal Inspectors and LA Chief Officer/HSE Regional Directors, Band 1 and Band 2?
  - Have your policy/decision makers drafted, tabled and approved a statement of commitment to improving H&S outcomes?
  - Have your policy/decision makers made a formal commitment to improving H&S outcomes?
  - Have your policy/decision makers formally agreed your enforcement policy and interventions plan and the capacity required to deliver them?
  - Does your EA's statement of commitment to improving H&S outcomes commit to provide the necessary resources and capacity to deliver its priorities and plan of interventions for the current year?
  - Does your EA have robust procedures in place for monitoring delivery of the intervention plan and periodically reporting progress to political/policy decision makers?
  - Does your EA maintain a premises database with the facility to store incident, investigation and service requests data to aid targeted interventions, which is regularly updated in order to maintain accuracy?
  - Does your EA have sufficient numbers of administrative and legal support staff, with sufficient resources and capacity to service the workload generated by the H&S enforcement staff?
  - Are managers and/or administrative staff able to run reports from the premises database that will assist in quantifying the projected number of proactive and reactive interventions and cases for work planning, capacity and resourcing purposes?
  - Is the intervention plan effectively implemented, including the production of targeted inspection lists? Are reactive investigations carried out where warranted?
  - Do managers effectively support enforcement staff and oversee casework concerning formal enforcement action, including service of notices, formal cautions and potential prosecution cases?
  - Do managers effectively oversee related monitoring systems concerning proactive interventions, reactive complaints, service requests and enforcement action?

- Is there an adequate training budget for enforcement staff in order to ensure a competent inspectorate? Are there arrangements for the long-term sustainability of the enforcement function in terms of funding of trainee enforcement officers, where appropriate in partnership with neighbouring authorities?
- **has sufficient resources and capacity to deliver the mandatory requirements of the [Priority Planning Guidance](#):**
  - Are all dutyholders due for inspection within the work year, as dictated by priority planning, included in your EA's intervention plan either as numbers of inspections or dedicated hours of officer contact time?
  - Are all new premises falling within the priority planning criteria inspected?
- **has sufficient resources and capacity to deliver the mandatory requirements of the [Incident Selection Criteria](#):**
  - Are all incidents falling within the criteria outlined in the toolkit responded to and, where required, investigated?
- **has sufficient resources and capacity to respond to all complaints/service requests and, where warranted, formally investigate using a risk-based approach:**
  - Are all incidents involving potentially serious or significant personal injuries or health effects, whether actual, possible or probable, investigated?
  - With regard to joint working, has your EA, in conjunction with neighbouring EAs, considered the establishment of a cross-boundary major investigation team or shared cross-boundary resources?
- **has sufficient resources and capacity to revisit dutyholders where circumstances involving matters of evident concern or serious/persistent breaches of statutory requirements are found, within a time period that is proportionate with those matters or breaches:**
- **has sufficient resources to effectively carry out the role of statutory consultee re 'Public safety' under the Licensing Act with reference to consultations, participation in any dedicated Safety Advisory Group (SAG) meetings, monitoring, inspection and intervention at outdoor events and safety issues arising at existing licensed premises:**
- **has sufficient resources and capacity to address emerging local or regional priorities, where related matters require action either without delay or within a current work year, without impacting upon year-planned inspections and interventions or accident investigation and complaint investigation requirements:**
  - Can your EA, in partnership with neighbouring authorities or co-regulators, facilitate this requirement via a cross-boundary resource-sharing arrangement or major incident investigation team?
  - Is your EA able to secure competent specialist resources on a short-term basis to assist with ongoing investigations or other such initiatives?
- **has sufficient resources and capacity to provide advice and guidance to dutyholders and respond to queries from employers, employees and the public:**
  - In order to facilitate this requirement has your EA set up a duty officer system to respond to complaints and queries or dedicated technical/administrative staff who can capture the relevant points of a service request for subsequent response within a set service standard time, or other arrangements that adequately meet this requirement?

- Has your EA sought to meet this requirement with pre-prepared or subject-selected hard copy packs or CD-rom containing leaflets and pre-prepared information sheets, and/or directed enquirers to the relevant areas of the HSE website or the LA's own website?
- **has sufficient resources and capacity to work in partnership with other EAs and regulators. Indicators of effective partnership working include:**
  - regular attendance at county H&S liaison groups, other appropriate partnership forums and related active contribution;
  - joint work planning with respective co-regulators and inclusion of joint interventions and initiatives within your EA's intervention plan;
  - recommended participation in a flexible warranting scheme;
  - having "buddy" arrangements in place with other EAs;
  - seeking to enhance your capacity via sharing of resources with other co-regulators, EAs and/or setting up a joint major incidents investigation team.
- **has sufficient resources and capacity to, where warranted, secure justice via proportionate, formal enforcement action either in the form of a prosecution, formal caution, statutory notices or a formal letter, in a manner that does not have an adverse effect upon other proactive and reactive operational capacity requirements of the capacity toolkit:**
  - Do you take the most appropriate enforcement action in line with your Enforcement Policy, the Enforcement Management Model, and Crown Prosecutor's Guide etc?
- **has sufficient understanding of the H&S enforcement role to be able to defend and maintain resourcing levels in compliance with the requirements of the Standard. Where enforcement staff resources reduce on a temporary or permanent basis due to either staff turnover, conflicting enforcement priorities within another regulatory function or, in extreme circumstances, reduction of the overall budget available.**

In general:

- **The sufficiency of resources and capacity required should be considered on the basis of amalgamating all of the above elements.**
- **The underlying basis of determination of resources should be the amount of enforcement activity required in relation to each element as opposed to the available financial/human resources determining the amount of enforcement activity.**
- **No single enforcement element should be considered in isolation.**
- **Resources and capacity should not be considered on a concurrent basis.**