



# Health and safety in local authority enforced sectors

# Section 18

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## HSC GUIDANCE TO LOCAL AUTHORITIES

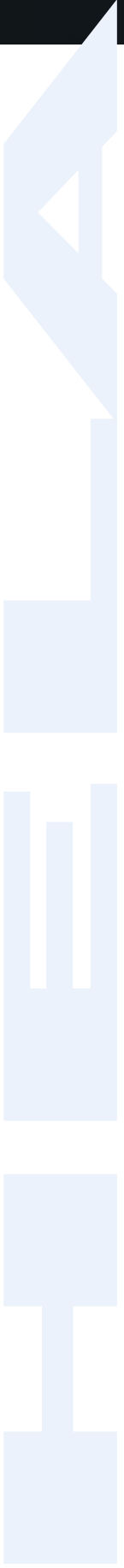
*Guidance issued by the Health and Safety Commission under section 18 of the Health and Safety at Work etc Act 1974 to local authorities as enforcing authorities. It is the duty of local authorities to act in accordance with this guidance.*

# Health and safety in local authority enforced sectors

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## HSC GUIDANCE TO LOCAL AUTHORITIES



# CONTENTS

**Introduction** 1

**HSC guidance notes** 5

**1 Enforcement policy and procedures** 5

**2 Prioritised planning** 7

**3 Requirement to produce a service plan, including investigation of accidents, complaints etc** 9

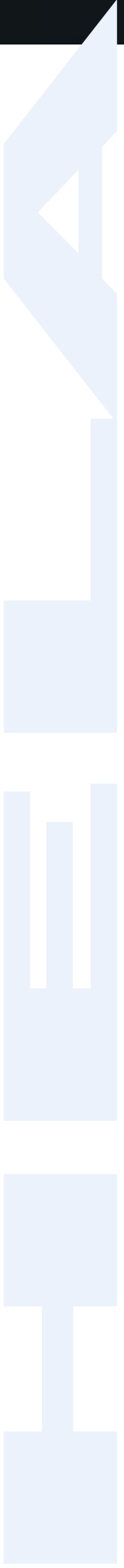
**4 Requirement to undergo audit and develop an action plan** 11

**5 Provision of a trained and competent inspectorate** 13

**6 Requirements in respect of Lead Authority Partnership Schemes (LAPS)** 15

**Annex 1 - Health and Safety Commission Statement on Enforcement Policy** 17

**Annex 2 - Competences for HSE and LA health and safety inspectors** 23



# INTRODUCTION

## THE STATUS AND CONTENT OF HSC SECTION 18 GUIDANCE TO LOCAL AUTHORITIES

- 1 Local authorities (LAs), as defined in the Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations), are responsible for the enforcement of the Health and Safety at Work etc Act 1974 (HSW Act) to the extent prescribed by the EA Regulations.
- 2 Section 18(4) of the HSW Act requires that local authorities perform their duties in accordance with guidance from the Health and Safety Commission (HSC). This guidance, commonly known as 'Section 18 Guidance', is therefore **mandatory**.
- 3 **Section 18 (4) states:** *'It shall be the duty of every local authority -*
  - (a) *to make **adequate arrangements** for the enforcement within their area of the relevant statutory provisions to the extent that they are by any of those provisions or by regulations under subsection (2) above made responsible for their enforcement; and*
  - (b) *to perform the duty imposed on them by the preceding paragraph and any other functions conferred on them by any of the relevant statutory provisions in accordance with such guidance as the Commission may give them.'*
- 4 The guidance notes issued by HSC under section 18(4) contain the broad principles which HSC wishes LAs to adopt in enforcing health and safety legislation. They provide a framework within which LAs should operate so that HSC can be confident that they are making adequate arrangements for enforcement.
- 5 In the view of HSC, the following elements are essential for an LA to adequately discharge its duty as an enforcing authority:
  - ▼ a clear published statement of enforcement policy and practice;
  - ▼ a system for prioritised planned inspection activity according to hazard and risk, and consistent with any advice given by the Health and Safety Executive and Local Authorities Enforcement Liaison Committee (HELA);
  - ▼ a service plan detailing the LA's priorities and its aims and objectives for the enforcement of health and safety;
  - ▼ the capacity to investigate workplace accidents and to respond to complaints by employees and others against allegations of health and safety failures;
  - ▼ arrangements for benchmarking performance with peer LAs;
  - ▼ provision of a trained and competent inspectorate; and
  - ▼ arrangements for liaison and co-operation in respect of the Lead Authority Partnership Scheme.

- 6 These elements are outlined in the HSC guidance notes within this folder. The guidance is not intended to be so detailed or prescriptive that it requires all LAs to operate identically. The Commission recognises that individual LAs' priorities are affected by local issues, and their duty to respond to the needs of their own communities and deliver a range of services. It is framed so as to allow LAs to perform their health and safety duties in a way which fits in with their wider role in their local community. It is also consistent with the general requirements of the Audit Commission and Audit Scotland to carry out audits of their administrative functions and the general principles of 'Best Value'.
- 7 An inter-authority audit protocol has been issued by HELA which will enable the HSC and local authorities to review and monitor the performance of individual LAs.

## HELA GUIDANCE

- 8 The HSC guidance made under section 18(4) of the HSW Act is supplemented by guidance from HELA in the form of Local Authority Circulars (LACs) and other key documents, eg on the management of enforcement. LAs should refer to this relevant guidance and subsequent revisions when considering how they will comply with their duties under section 18 of the HSW Act.

## A REQUIREMENT FOR LOCAL AUTHORITIES TO PROVIDE INFORMATION ON ENFORCEMENT ACTIVITY ETC

- 9 LAs need to ensure that they devote sufficient resources to the health and safety enforcement function to comply with their duties under section 18(4) of the HSW Act. HSC will take a view on the performance of LA enforcement and promotional activities, in accordance with *Revitalising Health and Safety* Action Point 27, using information supplied to it by LAs as requested (eg in their annual LAEI returns) by consulting with HELA, and by reviewing the reports of inter-authority audits carried out using the HELA protocol.

## DEFAULT POWERS UNDER SECTION 45 OF THE HSW ACT

- 10 If an LA fails to meet its legal obligations under section 18 of the HSW Act, the Secretary of State may, after considering a report submitted to him by HSC, cause a local inquiry to be held. If the Secretary of State is satisfied by such an inquiry that an LA has failed to perform any of its enforcement functions, he may make an order declaring the authority to be in default. The order may direct the authority to perform their enforcement functions in a specified manner within a specified period of time.
- 11 If the defaulting authority fails to comply with such an order under section 45 of the HSW Act, the Secretary of State may enforce the order, or make an order transferring the enforcement functions of the defaulting authority to the Health and Safety Executive (HSE). In such a case, HSE's expenses are paid by the defaulting authority.

## CONFLICT OF INTEREST

- 12** LAs can be both duty holders and enforcing authorities under the HSW Act. LAs must take care to ensure that there is no conflict of interest between these respective roles. HSC believes that clear statements of responsibility and transparency will minimise any potential difficulties. HELA has issued further guidance on this subject.

## REVOCAATION

- 13** All previous guidance notes issued in the HSC(G) series (Nos. 1-4) are superseded by this new guidance.

**THE FOLLOWING SECTIONS CONTAIN GUIDANCE PURSUANT TO SECTION 18(4)(b) OF THE HEALTH AND SAFETY AT WORK ETC ACT 1974, WHICH RESCINDS ALL PREVIOUS GUIDANCE ON THE SUBJECT.**



# **Section 18**

## Guidance Note 1

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ENFORCEMENT POLICY AND  
PROCEDURES

### I: ENFORCEMENT POLICY AND PROCEDURES

- 1.1 LAs, as enforcing authorities, must ensure that their approach to enforcement is consistent with the policy set out in the current HSC Statement on Enforcement Policy (see Annex 1).
- 1.2 HSC aims to protect the health, safety and welfare of people at work and to safeguard others, principally members of the public, who may be exposed to risks from the way that work is carried out. The appropriate use of enforcement powers, including prosecution, is an important means of securing compliance with the law.
- 1.3 Ministers wish to ensure that the law protecting the health and safety of workers and the public from risks arising from work activities is effective, and that there is a strict and fair enforcement regime. HSC's Statement on Enforcement Policy is in line with the Government's 'Enforcement Concordat', which emphasises better regulation and sets out the principles of good enforcement practice.
- 1.4 LAs should have their own clear and published enforcement policy. In drawing up these policies, LAs should consult stakeholders including local employers and employees and their representatives. LA enforcement policies should be formally adopted by Councils as set out in the 'Enforcement Concordat'.
- 1.5 When considering prosecutions or using other enforcement powers, LA inspectors should refer to the guidance in HSC's Statement on Enforcement Policy and other supplementary guidance on enforcement procedures issued by HELA.

#### Managing core enforcement processes

- 1.6 LAs should use a combination of enforcement processes to manage enforcement in line with the HSC Statement of Enforcement Policy. These core enforcement processes include:
  - ▼ **intervention** before any incident to assess, promote and enforce compliance;
  - ▼ **investigation** after an incident to identify underlying causes and the lessons to be learned, prevent recurrence, detect breaches and take appropriate action, including formal enforcement;
  - ▼ **permissioning** (eg asbestos removal), where the law requires close control of those activities where the potential for significant health impairment is high.
- 1.7 LAs have certain responsibilities to Ministers, HSC, elected members, duty holders, employees, and the public for enforcement activity. LAs should demonstrate the principles of proportionality, targeting, consistency and transparency when deciding on the appropriate enforcement process. Inspectors should also use these principles to guide their actions in applying the law to duty holders.
- 1.8 In managing enforcement processes LAs should aim to:
  - ▼ fulfil the HSC/HELA objective of reducing risks and protecting people;
  - ▼ implement HSC/HELA aims, priority programmes and have regard to the *Revitalising Health and*

*Safety Strategy Statement* published in June 2000;

- ▼ achieve the balance of enforcement processes which optimises overall effectiveness;
- ▼ ensure the immediate control of serious risk and promote continuous improvement and long-term compliance;
- ▼ work with duty holders, employees and their representatives by establishing effective dialogue to encourage open contribution and co-operation in achieving appropriate standards of health and safety;
- ▼ use the information supplied by the duty holder and employee representatives to help target enforcement activity proportionately and appropriately to promote cost-effective compliance;
- ▼ maintain transparent arrangements to promote public confidence;
- ▼ meet stakeholders' expectations and current Government response performance targets;
- ▼ collect, analyse, and disseminate information to improve the effectiveness of processes, law, policy and guidance and inform stakeholders;
- ▼ work in collaboration with other regulatory authorities, eg HSE, Petroleum Licensing Authority, Police (and Procurator Fiscal in Scotland).

### Authorisation of inspectors

- 1.9** Inspectors must be suitably authorised to undertake the tasks for which they are appointed, eg to institute proceedings or issue enforcement notices. Enforcement notices may only be signed and issued by an inspector who is of the opinion that there is, or has been, a contravention of one or more of the relevant statutory provisions or that there is a risk of serious personal injury.

### Open government/Disclosure of information

- 1.10** Procedures must be in place to enable information to be disclosed, as permitted under section 28 of the HSW Act and other relevant legislation.
- 1.11** A summary of the details of prosecutions taken by LAs is to be published on the HSE website. LAs are required to submit details of prosecutions taken by them for this purpose, eg description of offence, details of defendant, fine imposed etc.

### Complaints about local authorities or their officers

- 1.12** Employers or others should be advised to contact the LA inspector's line manager in the first instance if they have a complaint. Any complaints received should be handled in accordance with the local authority's current instructions. In cases where a complainant is not satisfied that procedures have been followed, the complainant can approach HSE's Local Authority Unit (LAU). LAU will ensure that the complaint has been dealt with promptly and properly by the LA.
- 1.13** If appropriate, LAU will also consider whether the LA is making adequate arrangements for enforcement and make a report to HSC if necessary. In cases of maladministration a complaint can also be made to the Local Government Ombudsman in England, Scotland or Wales.

# **Section 18**

## Guidance Note 2

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PRIORITISED PLANNING

## 2 PRIORITISED PLANNING

- 2.1** LAs should establish and maintain a planned inspection programme based on the selection of premises for inspection using risk-based priority planning systems and taking account of HSC's current Strategic Plan, as reflected in the current HELA Strategy and HELA guidance to LAs.
- 2.2** A priority planning system based on risk assessment enables resources to be targeted at those employers and activities which pose the greatest risk to health and safety. Key features of such systems are a clear distinction between hazard and risk and guidance on making hazard and risk judgements about occupational health and safety issues.
- 2.3** To maximise effective use of resources and produce commensurate benefits, a systematic assessment of priorities is needed. LAs may also employ special initiatives, national or local campaigns, designed to tackle specific issues that have been identified.
- 2.4** Key risk areas should be targeted which have been identified by national agendas and local intelligence. Various enforcement approaches may be used and include promotional activities, the production of leaflets, use of mailshots etc.
- 2.5** To promote health and safety and develop a co-ordinated programme of activities, LAs' environmental health departments should work with other departments within their authorities as well as with Government Departments and Agencies, other local bodies, stakeholders and intermediaries such as Regional Development Agencies, the Small Business Service, local employee and employer representative organisations, Health Improvement Programmes (HImPS), Crime and Disorder Partnerships etc.
- 2.6** Information will be requested from LAs by HSC and HELA (and/or by LAU on their behalf). Records of premises/duty holders should be accurately maintained and contain comprehensive information that includes names, addresses, history of accidents and complaints, inspections, investigations, enforcement action and priority ratings. LAs must ensure that databases are accessible to all staff that need to use them and that they are adequately maintained.

# Section 18

## Guidance Note 3

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REQUIREMENT TO PRODUCE A SERVICE PLAN, INCLUDING INVESTIGATION OF ACCIDENTS, COMPLAINTS ETC

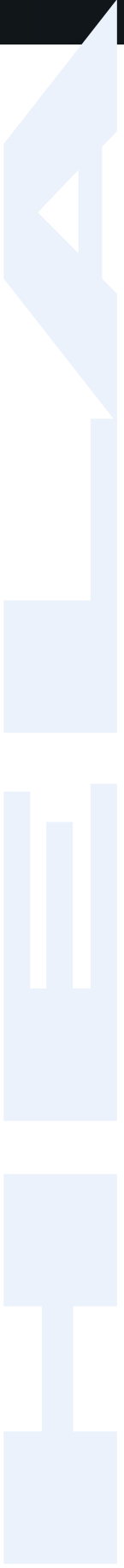
### 3 REQUIREMENT TO PRODUCE A SERVICE PLAN, INCLUDING INVESTIGATION OF ACCIDENTS, COMPLAINTS ETC

#### Service plan

- 3.1** LAs should produce and make available an annual health and safety service plan which is agreed by their elected members and makes clear their arrangements for contributing to current HSC priorities. The service plan will need to take account of local needs while addressing national priorities as set out by HSC in its Strategic Plan. In drawing up a service plan, LAs should consult stakeholders including local employers and employees and their representatives. The service plan should identify both reactive and proactive work, and include details of planned promotional and educational activities. LAs should refer to HELA guidance when constructing their plans.
- 3.2** The service plan should include information on the following:
- ▼ future objectives and major issues that cross service boundaries;
  - ▼ key programmes, including a planned inspection programme in the context of the current HSC Strategic Plan and HELA Strategy;
  - ▼ information on the service that is being provided;
  - ▼ the means by which these services are going to be provided;
  - ▼ any performance targets and how they will be achieved;
  - ▼ a review of performance to address any variance from meeting the requirements of the service plan.
- 3.3** Service plans will be reviewed as part of the audit process described in the HELA protocol on inter-authority auditing. This may be used by HSC, HELA and other LAs to monitor performance against current objectives.
- 3.4** Many LAs have been developing departmental service plans for some years and have corporate styles or templates that they wish to maintain. Some LAs undertake the planning and review processes at different times and issue the results of review as a separate document. There is flexibility for LAs to incorporate this information together with other enforcement functions in one overall service plan, but LAs should ensure that the information required in respect of their health and safety enforcement function, as outlined in this guidance, is included and identifiable in their service plan or other relevant reports.

#### Investigations

- 3.5** LAs should allocate sufficient time and resources for reactive work to investigate accidents, dangerous occurrences, cases of occupational ill health and complaints. It will not generally be possible to investigate all incidents and a systematic approach should be adopted to ensure that the more serious receive appropriate attention in accordance with HSC/HELA objectives and priorities. There should be clearly stated criteria on which decisions to investigate are based.

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- 3.6** Guidance and training material will be issued by HELA on the selection and procedure for investigation of accidents, ill health and complaints for investigation.
- 3.7** LAs should also investigate complaints which may be lodged against their members of staff or the LA itself. Complainants should be encouraged to contact the relevant inspector's line manager in the first instance. Any complaints received should be handled in accordance with the LA's current instructions. See also HSC's Section 18 Guidance Note No 1 (paragraphs 1.12-1.13).



# Section 18

## Guidance Note 4

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REQUIREMENT TO UNDERGO AUDIT  
AND DEVELOP AN ACTION PLAN

# 4 REQUIREMENT TO UNDERGO AUDIT AND DEVELOP AN ACTION PLAN

## Auditing

- 4.1 To ensure that any management system is effective, it should be frequently monitored, reviewed and quality audited. A quality audit may be defined as a systematic and independent examination to determine whether quality activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve specified objectives.
- 4.2 Appropriate techniques should be used to measure performance against agreed standards and benchmarks, to ensure that policies are being adhered to and that the aims and objectives of the organisation are being achieved. The results and recommendations arising from any review process such as benchmarking, peer review and auditing, should be developed into an action plan for continuous improvement.
- 4.3 All enforcing authorities should have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities in accordance with HSC's enforcement policy. The use of auditing and benchmarking will help to achieve consistency.

## Inter-authority audits

- 4.4 In accordance with the *Revitalising Health and Safety Strategy Statement* published in June 2000, HSC is committed to maximising the contribution of LAs to health and safety enforcement, and to give their roles and responsibilities a greater clarity. HSC has worked with HELA to develop an inter-authority audit protocol which provides a framework to help LAs assure themselves and HSC that they are making an effective contribution to its Strategic Plan and are complying with HSC's mandatory Section 18 Guidance. The HELA audit protocol for LAs' management of health and safety enforcement was issued in June 2000.
- 4.5 Auditing will also help LAs and HSC to identify and share good practice, promote consistency of enforcement among LAs and promote continuous improvement in the delivery of their health and safety enforcement service. It will help LAs to identify their strengths and weaknesses and to act on the lessons learnt. It will help LAs to identify evidence of non-compliance with mandatory requirements and key areas for more detailed examination, review and action.
- 4.6 HSC expects all LAs to undergo an audit of their management of health and safety enforcement at least once every five years. The audit may form part of the Best Value review and the HELA inter-authority audit protocol has been designed as a tool which LAs can use in their Best Value reviews. HSC may review audit reports and any subsequent action plans, which will identify aspects of LAs' management of health and safety enforcement which may need to be improved.

## Action plan

- 4.7** If necessary, the action plan should set out a programme for improvement. It should set out the objectives of the plan, what needs to be done, how it will be done and organised, a timetable for the work, systems for measuring and reviewing performance against the plan and a system for recording progress against it. Planned action should feature in LAs' service plans. The LA should ensure there is commitment throughout the organisation to take the plan forward.
- 4.8** Action plans may also be requested by HSC or HELA from time to time to identify best practice and the need for any further support or guidance.

# Section 18

## Guidance Note 5

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PROVISION OF A TRAINED AND  
COMPETENT INSPECTORATE

## 5 PROVISION OF A TRAINED AND COMPETENT INSPECTORATE

### Competence

- 5.1** Competence means the ability to perform all the activities required in a particular occupation to the levels of performance expected. It includes the ability to apply skill and knowledge to new situations. In relation to inspectors, it encompasses organisation and planning of the work of undertaking enforcement action in accordance with legal procedures and the interpersonal skills necessary to deal with colleagues and the public.
- 5.2** Trainees and others who have not reached the necessary standards of competence and who carry out visits to premises for the purpose of providing health and safety advice and enforcing health and safety regulations should be appropriately supervised by a colleague who does possess all the necessary standards of competence. The form this supervision takes will depend on the level of training and experience of the individual concerned. The degree and extent of supervision will be expected to change over time as the person being supervised gains experience and competence.

### Authorisation

- 5.3** For the purpose of this guidance, the definition of an inspector includes all those appointed under section 19 of the HSW Act and who are authorised by their authority to exercise any or all of the enforcement powers specified in:
- ▼ sections 20, 21, 22, 25 and in England and Wales section 39 of the HSW Act;
  - ▼ any health and safety regulation; and
  - ▼ any other relevant statutory provisions (see Schedule 1 to the HSW Act).

Whether an enforcing authority decides to authorise its inspectors to proceed with their own cases in a Magistrates' court is one for local decision and not a matter which affects the broad areas of competence necessary for an authorised inspector as defined.

- 5.4** Separate authorisation may be required under other primary legislation enforced by LA inspectors, eg pesticide legislation under the Food and Environment Protection Act 1985.

### Appointment

- 5.5** LAs should ensure that they only appoint inspectors who possess the necessary competences to carry out the tasks which they will be authorised to do.

**5.6** HSC considers that the elements of competence (based on those developed for the National/Scottish Vocational Qualification (N/SVQ) for health and safety regulators and published by the Occupational Health and Safety Lead Body), represent the core competences needed by inspectors who are authorised to exercise all the specified powers listed in paragraph 5.3. The current list of unit and element headings in the competency framework are given in Annex 2.

**5.7** Inspectors not authorised to exercise all the specified powers listed in paragraph 5.3 should either:

- ▼ have the competences relevant to the powers for which they have been given authorisation; or
- ▼ be subject to adequate and appropriate supervision by other inspectors who possess these standards of competence (see paragraphs 5.8 and 5.9).

**5.8** HSC expects enforcing authorities to satisfy themselves that all inspectors either have adequate standards of competence in all the relevant areas listed in Annex 2 or are subject to adequate and appropriate supervision by other inspectors who do possess these standards. It is up to individual enforcing authorities to decide how they choose to do this. HSC recognises the health and safety regulators N/SVQ as a means of demonstrating the achievement of the necessary standards of competence. An adequate internal performance appraisal system is another means of demonstrating the achievement of the necessary standards of competence. LAs should refer to the elements describing the appropriate standards of competence currently issued by the Occupational Health and Safety Lead Body, as listed in Annex 2.

## Training

**5.9** One way in which an enforcing authority can meet its legal duty under section 18(4)(a) of the HSW Act is through the provision of suitable training (including refresher training) and assessment, so that inspectors are able to attain and maintain competence.

## Supervision

**5.10** Appropriate supervision - *by a colleague who has demonstrated the relevant standards of competence* - may include:

- ▼ being accompanied;
- ▼ a follow-up check visit;
- ▼ examination of a sample of letters and enforcement notices;
- ▼ 'de-briefing' sessions after visits;
- ▼ providing reports on the outcome of some recent visits for review.

## HELA guidance

**5.11** In all cases, LAs and their appointed inspectors should have regard to current HELA guidance when carrying out their enforcement functions.

# **Section 18**

## Guidance Note 6

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REQUIREMENTS IN RESPECT OF LEAD  
AUTHORITY PARTNERSHIP SCHEMES  
(LAPS)

# 6 REQUIREMENTS IN RESPECT OF LEAD AUTHORITY PARTNERSHIP SCHEMES (LAPS)

- 6.1** HELA's Lead Authority Partnership Scheme (LAPS) promotes consistency of LA health and safety enforcement among organisations with multiple premises in different areas. The enforcing authority (EA) may also be HSE in some instances. Upon joining the scheme, each new Lead Authority uses its professional judgement to decide the steps necessary to familiarise themselves adequately with its Partner Organisation. Thereafter, the Lead Authority acts as a focal point for liaison with other LAs and HSE on health and safety issues affecting the Partner Organisation.
- 6.2** HSE's Local Authority Unit should be notified of all new LAPS partnerships. HELA reviews all partnerships and holds the definitive list of partners on the scheme. All LAs and HSE will then be informed of the new partnership details, eg by inclusion on the LAU/HELA pages of the HSE website.
- 6.3** All health and safety EAs should contact and, if necessary, liaise with the relevant Lead Authority:
- ▼ before taking formal enforcement action, ie issuing notices or considering prosecution against a participating organisation, except in the case of immediate danger;
  - ▼ after serving a prohibition notice as soon as is practicable;
  - ▼ when significant shortcomings are identified in a participating organisation's agreed policies or procedures which the EA believe ought to be challenged at a national level;
  - ▼ following any on-site investigation of any death, major injury, case of work-related ill health or dangerous occurrence reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.



# HEALTH AND SAFETY COMMISSION

## STATEMENT ON ENFORCEMENT POLICY

### Introduction

- 1 The aims of the Health and Safety Commission are to protect the health, safety and welfare of employees and to safeguard others, principally the public, who may be exposed to risks from work activity. This statement sets out the general principles and approach which the Commission expects enforcing authorities to follow. It is written for enforcing authorities, who need to know the Commission's policy, and for anyone who has an interest in the enforcement of the Health and Safety at Work etc. Act 1974 and relevant statutory provisions.
- 2 Enforcing authorities\* must seek to secure compliance with the law. Most of their dealings with those on whom the law places duties (employers, the self-employed, employees and others) are informal - inspectors offer information, advice and support, both face-to-face and in writing. They may also use formal enforcement mechanisms, as set out in health and safety law, including improvement notices where a contravention needs to be remedied; prohibition notices where there is a risk of serious personal injury; withdrawal of approvals; variations of licences or conditions, or of exemptions; or ultimately prosecution. This statement applies to all dealings, formal or informal, between inspectors and duty holders - all contribute to securing compliance.
- 3 The Commission's view of enforcement derives from the philosophy set out in Lord Robens' report 'Safety and Health at Work' (cmdnd 5034 1972). Lord Robens considered that there should be a quick and effective response to flagrant breaches of the law and a discriminating and efficient approach to other breaches.
- 4 Much of modern health and safety law is goal setting - setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goals is often set out in codes and there is also a wide variety of advisory material describing good practice. Neither codes or guidance material are in terms which necessarily fit every case. In considering whether good practice has been adopted, inspectors will need to take relevant codes and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters below.
- 5 Sometimes the law is prescriptive - spelling out in detail what must be done. For example, all mines must have more than one exit; contacts with live electrical wires must be avoided. Prescriptive law limits the discretion of the duty holder and the enforcer.

### Principles of enforcement

- 6 The enforcement of health and safety law should be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach, *targeting* of enforcement action; and *transparency* about how the regulator operates and what those regulated may expect.

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\* Health and safety law is enforced by HSE and local authorities: premises and activities are allocated in the Health and Safety (Enforcing Authority) Regulations 1989.

## Proportionality

- 7** Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach.
- 8** Some health and safety duties are specific and mandatory - others require action so far as practicable. In general, the concept of proportionality is built into the regulatory system through the principle of 'So far as is reasonably practicable'. Deciding what is reasonably practicable to control risks involves the exercise of judgement by duty holders and discretion by enforcers. When duty holders and enforcers cannot reach agreement, final determinations on what is reasonably practicable in particular circumstances are made by the courts.
- 9** When the law requires that risks should be controlled so far as is reasonably practicable, enforcing authorities considering protective measures taken by duty holders should always take account of cost as well as the degree of risk. The authorities may legitimately expect that relevant good practice will be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to assess the significance of the risks (both their extent and likelihood) to determine what action needs to be taken. Some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences. At the other extreme, some risks may be so trivial that it is not worth spending more to reduce them. In general, risk-reducing measures would be weighed against the associated costs. If there is a significant risk, the duty holder must take measures unless the cost of taking particular actions is clearly excessive compared with the benefit of the risk reduction.

## Consistency

- 10** Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 11** Duty holders managing similar risks expect consistency from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to accidents.
- 12** The Commission recognises that in practice consistency is not a simple matter. HSE inspectors and local authority enforcing officers are faced with many variables: the level of hazard, the attitude and competence of management, the accident history may vary between companies which may otherwise appear similar. The decision on enforcement action is a matter of judgement and the enforcer must exercise discretion. All enforcing authorities should have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

## Transparency

- 13** Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 14** This statement sets out the general policy framework within which enforcing authorities should operate. Duty holders need to know what to expect when an inspector calls and what rights of complaint are open to them. HSE's approach is set out in two publications, *HSE: Working with employers* and *HSE and you*, produced in response to the Citizen's Charter, and reflecting the principles of the Government's 'Code for enforcement agencies'. The publications describe a complaints procedure in the case of administrative decisions, and appeals to an industrial tribunal in the case of statutory notices. The Commission has asked local authorities to adopt the principles of the Government's Code.

## Targeting

- 15** Targeting means making sure that inspection is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it - whether employers, manufacturers, suppliers, or others.
- 16** The Commission expects that enforcing authorities will have systems for prioritising visits according to the risks posed by a duty holder's operations and that they will take account of hazards and the nature and extent of risks. Management competence is important, because a relatively low hazard site poorly managed can entail greater risk to its workforce or the public than a higher hazard site where risk-control measures are in place. There are, however, high hazard sites (eg nuclear installations, offshore installations, highly hazardous chemical plant or processes) which will receive regular visits so that enforcing authorities can be sure that remote risks continue to be effectively managed.
- 17** When formal enforcement action is necessary, the person responsible for creating a risk should be held to account for it. The duty holder may be the owner of the premises, or the supplier of the equipment, or the designer or client of the project, rather than the employer of the workers exposed to the risk. Where several duty holders share a responsibility, enforcing authorities should take action against those who can be regarded as primarily in breach.

## Prosecution

- 18** Enforcing authorities must use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote health and safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

**19** The Commission expects that enforcing authorities will consider prosecution\* when:

- ▼ it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offenders, others may be deterred from similar failures to comply with the law; or
- ▼ there is judged to have been potential for considerable harm arising from breach; or
- ▼ the gravity of the offence, taken together with the general record and approach of the offender warrants it, eg apparent reckless disregard for standards, repeated breaches, persistent poor standards.

The decision to prosecute must also take account of the criteria set down in the Code for Crown Prosecutors, and in Scotland by the Procurator Fiscal as published in the Crown Office and Procurator Fiscal Service's Annual Report 1992/93, eg evidence and public interest tests.

### Prosecution of individuals

**20** Subject to the above, enforcing authorities should identify and prosecute or recommend prosecution of individuals, including company directors and managers, if they consider that a conviction is warranted and can be secured.

### Death at work

**21** Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter (culpable homicide in Scotland). Enforcing authorities in England and Wales should liaise with the Police, Coroners and the CPS and if they find evidence suggesting manslaughter, pass it on to the Police or, where appropriate, the CPS. If the Police or the CPS decide not to pursue a manslaughter case, the enforcing authorities should prosecute or recommend prosecution of a health and safety case if that is appropriate. In Scotland responsibility for investigating sudden or suspicious deaths rests with the Procurator Fiscal.

### Encouraging action by the courts

**22** Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. The Commission will continue to raise the courts' awareness of the gravity of health and safety offences and encourage them to make full use of their powers. A list of the sanctions presently available to the courts is attached to this statement.

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\* In England and Wales the decision to proceed with a court case rests with the enforcing authorities. In Scotland the Procurator Fiscal decides. This may be on the basis of a recommendation by an enforcing authority; although the Procurator Fiscal may institute proceedings independently of an enforcing authority. The Crown Office Edinburgh and the Procurator Fiscal Service endorse this Statement by the Commission, and acknowledge that action on reports of offences submitted to them by the enforcing authorities should reflect the approach set out here.

## PENALTIES FOR HEALTH AND SAFETY OFFENCES\*

### Lower Courts:

- ▼ For a failure to comply with an improvement or prohibition notice, or court remedy order:  
- a fine of up to £20 000, or 6 months imprisonment or both.
- ▼ For breaches of sections 2-6 of the Health and Safety at Work etc Act 1974:  
- a fine of up to £20 000.
- ▼ For other breaches of the Health and Safety at Work etc Act not specified above, or of relevant statutory provisions under the Act:  
- a fine of up to £5000.

### Higher Courts:

- ▼ For failure to comply with an improvement or prohibition notice, or a court remedy order:  
- 2 years imprisonment, or an unlimited fine, or both.
- ▼ For contravening licence requirements or provisions relating to explosives:  
- 2 years imprisonment, or an unlimited fine, or both.
- ▼ For breaches of the Health and Safety at Work etc Act 1974, or of relevant statutory provisions under the Act:  
- unlimited fines.

\* As at 1995. These penalties can change from time to time.

# COMPETENCES FOR HSE AND LA HEALTH AND SAFETY INSPECTORS

The following is a summary of the units and essential elements in the standards for Occupational Health and Safety Regulation (Elements H23 - H31), published by the Occupational Health and Safety Lead Body.

## **H23 Identify the regulatory authority's plans and priorities and contribute to them effectively.**

- H23.1 Identify the regulatory authority's objectives, plans and priorities and contribute to them effectively.
- H23.2 Manage time effectively to ensure the efficient use of resources.

## **H24 Inspect duty holders, worksites and activities.**

- H24.1 Prepare for inspections.
- H24.2 Conduct inspections.
- H24.3 Report on the conduct and findings from inspections.

## **H25 Investigate accidents, incidents, ill-health reports and complaints.**

- H25.1 Prepare for investigations.
- H25.2 Determine immediate action needed.
- H25.3 Carry out investigations.
- H25.4 Evaluate the extent of intervention and enforcement needed.
- H25.5 Manage and conclude investigations.

## **H26 Plan and gather evidence.**

- H26.1 Plan the taking of evidence.
- H26.2 Gather and preserve evidence.

## **H27 Enforce statutory provisions and brief a prosecutor.**

- H27.1 Prepare prosecution reports.
- H27.2 Initiate prosecution proceedings.

## **H28 Enforce statutory provisions and present guilty pleas in Magistrates' Courts.**

- H28.1 Prepare prosecution reports.
- H28.2 Initiate and conduct guilty pleas in court.

## **H29 Draft and serve notices and similar documents.**

H29.1 Draft and serve notices and similar documents.

## **H30 Influence duty holders and others.**

H30.1 Work with duty holders and others to establish health, safety and welfare standards, procedures and management arrangements in force in the organisation.

H30.2 Influence duty holders and others to improve health, safety and welfare standards, procedures and policies.

H30.3 Communicate with duty holders, employee representatives and external parties.

H30.4 Communicate with colleagues.

## **H31 Promote health and safety through regulatory and promotional activity.**

H31.1 Plan and contribute to local products and initiatives.

H31.2 Promote health and safety awareness through dissemination of appropriate information.

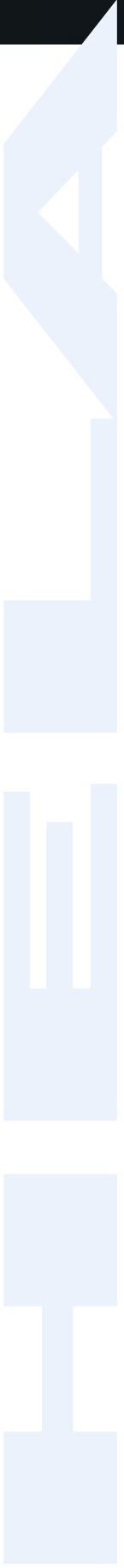
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