

LUTON BOROUGH COUNCIL
ENVIRONMENTAL AND CONSUMER SERVICES

**SERVICE PLAN FOR HEALTH & SAFETY
ENFORCEMENT**

2006/7

*Drawn up in accordance with the Health & Safety Commission
Section 18 Guidance Note to Local Authorities issued by HELA
(Health & Safety Executive/Local Authority Committee), October
2002 (as amended)*

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INTRODUCTION

- 0.1 This the fifth Service Plan dedicated to Health & Safety Enforcement Functions carried out by Environmental Health Officers, and other Enforcement Officers, under the provisions of the Health & Safety at Work etc., Act 1974, and associated relevant Statutory Provisions in premises allocated to the Council by the Health and Safety (Enforcing Authority) Regulations 1999.
- 0.2 Within the allocation, Health and Safety Enforcement work is carried out by competent officers within the Health & Safety and Food Control Groups. Officers of the Health and Safety Group deal with all non-food commercial premises whilst the Food Control Group Officers enforce Health and Safety Legislation in all premises registered under Food Law.
 - 0.2.1 The Health and Safety at Work etc., Act 1974 allows for varying levels of Enforcement action to be considered. This includes Powers of Entry, Inspections, the Service of Improvement and Prohibition Notices or Prosecution. In consequence, the Health and Safety Commission (HSC) has issued Guidance under Section 18 of the Act, through the Health and Safety Executive/Local Authority Liaison Committee (HELA). This Guidance requires Local Authorities to ensure that Officers carrying out Health and Safety enforcement are authorised to a level appropriate to their competence. An update of the authorisations of all Officers carrying out Health and Safety Enforcement work in the Borough was undertaken in the latter part of 2005 and authorisations re-issued accordingly. A full review is scheduled for late 2006.
- 0.3 The HSC requires this Health and Safety Enforcement Service Plan to be submitted to the relevant Member Forum for approval to ensure local transparency and accountability. This will be done by submitting this document to the Council's Executive before, or as soon as practicable after, its commencement date (1st April 2006). When approved, the Plan will be made available in the public arena, including via the Council's website.
- 0.4 The stated aim of the HSC is that Health and Safety Enforcement be made more effective and be undertaken by the various agencies (Local Authorities and the Health and Safety Executive (HSE)) in a more effective, comprehensive and collaborative manner. This Service Plan sets out to achieve those objectives.

- 0.5 In the latter part of 2004 HELA revised its Guidance regarding the approach local authorities should take when enforcing Health and Safety legislation. Whilst retaining the principal of directing resources to priority issues, the manner in which those priorities are to be assessed has changed significantly. The emphasis on a risk-rating score triggering a programmed inspection for all business premises has been reduced, with greater emphasis now being placed on Other Intervention Strategies (OIS). The latter allowing specific issues or work areas to be targeted as appropriate to meet locally identified needs
- 0.6.1 A total of 6.53 FTE officers would be required to undertake all of the work identified in this Plan. However, the current resources available (including contributions from officers of the Food Control team) amounts to only 3.6 FTE leaving a shortfall of 2.93 FTE. The consequence of this will be that whilst participation in Other Intervention Strategies (OIS) remains a high priority, the extent of involvement will be less than if 6.53 FTE officers were available. This will result in fewer businesses receiving in-depth advice on compliance.
- 0.7 For more information on the HSC visit the HSE website at <http://www.hse.gov.uk/>

SECTION 1 : HEALTH & SAFETY ENFORCEMENT AIMS AND OBJECTIVES

1.1 Aims and Objectives

1.1.1 The values of the Council are:

- Lifelong learning for all
- Sustainable solutions for Luton's communities
- Protect and support the vulnerable, promote independence
- Open, accessible and responsive government
- Promote equal opportunities, tackle disadvantage
- Value for money
- Value our workforce
- Active in partnerships, ready to work with others

1.1.2 The Council's vision, Luton 2011, incorporates health and social care and environment goals. The provision of an effective health and safety law enforcement service that responds effectively to the needs of consumers and deals fairly and consistently with businesses is an important part of this vision.

1.1.3 In line with the Council's mission the Environmental and Regeneration Department's vision statement is

"To develop a sustainable, quality environment for Luton."

1.1.4 The Departmental Objectives are:

- To protect the community.
- To provide safe access and mobility for all.
- To protect and improve the green and built environment.
- To make Luton a key business and investor location.
- To provide a clean and healthy environment.

1.1.5 As part of Environment and Regeneration, the Environmental and Consumer Services Mission Statement is:

To create, develop and maintain a clean, safe, fair and healthy environment in Luton.

Objectives

- To contribute to people's safety, health, economic and environmental well being by ensuring a fair and safe trading environment.
- To deliver services to local communities to ensure they are informed, empowered, supported and protected

- To identify and work in partnership with other providers to contribute towards improving public health, reducing crime and improving the environment.
- To deliver an efficient, effective and improving service.

1.2 Links to corporate objectives and plans

- 1.2.1 Health and Safety Enforcement works to the key values and objectives of the Council that set out in the Environmental and Consumer Services (E&CS) Service Plan for 2005/6. Section A of the E & CS Service Plan gives more information on the Aims and Objectives.
- 1.2.2 Health & Safety Enforcement forms part of the Council's Best Value Performance Plan. **Appendix 1** sets out the relevant Best Value Performance Plan indicators.

SECTION 2 : BACKGROUND

2.1 Borough Profile

- 2.1.1 Luton is one of the largest towns in South East England, with a registered population of 184,000 residents. Roughly 40% are aged under 25. Luton's people come from a wide range of ethnic backgrounds. Approximately 28% are of Black and Minority Ethnic origin, with significant Pakistani/Kashmiri, Indian and African Caribbean communities. In recent years there has been a small influx of asylum seekers from Central/Eastern European Countries.
- 2.1.2 The town's character results in a distinctive range of service challenges and opportunities that are affecting Luton's population. For example:
- The main ethnic minority languages spoken in Luton are Urdu, Bengali (Sylheti dialect), Gujarati, Hindi and Punjabi.
 - The number of older people is likely to grow over the next 10 years.
 - The unemployment rate is 3.9% (January 2006) with higher unemployment in the inner Wards of the Borough
- 2.1.3 London Luton Airport is located on the south-eastern boundary of the borough.

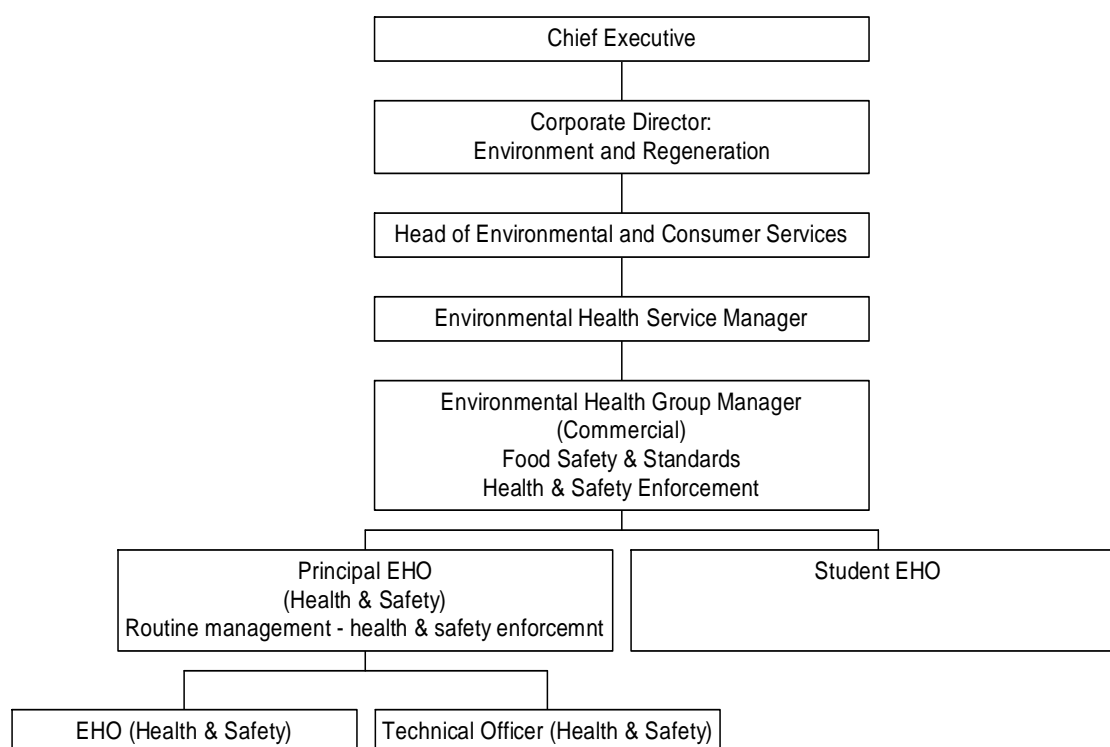
2.2 Organisational structure

- 2.2.1 The Health and Safety Group is part of Environmental and Consumer Services under the direction of the Head of E&CS who is accountable to the Corporate Director (Environment and Regeneration). The officer structure in respect of Health and Safety Law Enforcement is shown at **Figure 1**, overleaf.
- 2.2.2 Strategic direction of the Environmental Health Service, of which health and safety enforcement is a part, rests with the Environmental Health Service Manager, co-ordination of Health and Safety Enforcement is the responsibility of the Environmental Health Group Manager (Commercial) whilst day-to-day

management is undertaken by the Principal Environmental Health Officer (Health & Safety).

- 2.2.3 Internal work arrangements within the Environmental Health section of E&CS result in day-to-day Health and Safety Enforcement being carried out by officers of the Health and Safety Group in all non-food commercial premises, and by officers of the Food Control Group in premises registered under Food Law.

Figure 1



Committee structure

- 2.2.4 As part of the Modernising Government Agenda, the Council has formally adopted the Executive Model of decision-making as shown at **Appendix 2**.
- 2.2.5 Health and Safety Enforcement forms part of the portfolio of the Executive Member for Housing and Waste Management (which includes Environmental Health).
- 2.2.6 Scrutiny Committees review decisions of the Executive Committee and comment upon them. It also reviews major areas of the Council's policy and activity and makes recommendations to the Executive or Council. Scrutiny Committees have no decision-making powers

2.3 Scope of Health and Safety Enforcement

2.3.1 Health and Safety Enforcement is undertaken by officers of both the Health and Safety and the Food Control Groups, and includes;

- Health and Safety Enforcement in premises allocated to Luton Borough Council under the Health & Safety (Enforcing Authority) Regulations 1999
- Health and Safety advice to businesses and Members of the Public
- Liaison with the Council's events Safety Advisory Group (SAG)

2.3.2 In addition, the Health and Safety Group covers the following specific areas:

- Public Health issues in commercial premises not Registered under Food Safety Law.
- Body Piercing activities
- Sunday Trading
- Registration of Motor Salvage Operators
- Licensing of Pet Shops, Riding Establishments, Animal Boarding Establishments, Dog Breeders and Sex Establishments
- Scrap metal registration
- Registration of Cooling Towers and Evaporative Condensers,

and the Food Control Group covers;

- Inspection and Enforcement of Food Safety Law in food premises
- Food Safety Training and advice
- Food Standards (Composition and Labelling)
- Feeding stuffs Enforcement
- Infectious Disease Investigation
- Port Health Enforcement
- Imported foods Regulations

2.4 Demands on resources available for Health and Safety Enforcement.

Planned Health and Safety Enforcement visits

Note: all figures as at 14th February 2006

2.4.1 A total of **3000** premises are allocated to Luton Borough Council for Health and Safety Enforcement of which **907** are Registered under Food Safety Law.

2.4.2 In order to reflect the HSC's new Health and Safety Intervention Strategy, HELA has revised its guidance on how Local Authorities should inspect and rate premises under their enforcement remit. Staffing resources are now targeted to develop and carry out more effective Health and Safety Intervention Strategies, in accordance with current HELA guidance.

A breakdown, by Risk Rating, of the premises due Health and Safety inspections, is given in Tables 1.

Table 1

Risk Category	Number of Premises to be inspected		
	Health & Safety Group	Food Safety Group	Total
A	18	76	94
B1	45	61	106
B2	56	71	127
Sub Total	119	208	327
B3	179	114	293
B4	206	147	353
C	1589	438	2027
Total	2093	907	3000

Classifications as defined in HELA Local Authority Circular (LAC) 67/1 (Revision 3) – Advice to Local Authorities on Intervention Programmes and an Inspection Rating System (LAC 67/1 rev 3). The figures given above represent the total number of businesses due to be inspected within the year. However, LAC 67/1 rev 3 recommends that only a set proportion of businesses within each category are actually inspected in any given year. This is given in Table 1A.

Table 1A

Risk Category	Percentages to be Inspected, as per LAC 67/1 rev 3, per year	Total Number of Premises to be Inspected	Number of Premises due to be Inspected this year, as per LAC 67/1 rev 3
A	100%	94	94
B1	66%	106	70
B2	50%	127	63
Total		327	227

- 2.4.3. Businesses classified A, B1 or B2 will be inspected as part of the Programmed Inspection regime. This requires the businesses to be inspected within the timescale as defined in LAC 67/1 rev 3.
- 2.4.4 Those businesses classified B3, B4 or C will no longer require a routine, proactive inspection. Instead, Other Intervention Strategies (OIS) will be developed to assess their Health and Safety requirements, again within a defined timescale. An OIS can include detailed questionnaires, targeted risk specific project work, or dedicated campaigns covering a specific sector of industry or geographical area, or any other type of campaign where locally recognised factors can be shown to have contributory effect.
- 2.4.5 Table 2, summarises the timescale for both Programmed Inspections and OIS, as defined by LAC 67/1 rev 3.

Table 2

Level of Risk	Risk Band	Actual Risk Score	Inspection Frequency
Highest	A	≥ 186	Within 12 months
Intermediate (High)	B1	171 – 185	Within 18 months
	B2	156 – 170	Within 24 months
Intermediate (Low)	B3	141 – 155	OIS with 3yr review
	B4	126 – 140	OIS with 5yr review
Low	C	≤ 125	OIS (with 8yr review)

- 2.4.6 In view of these changes, a breakdown of the number of inspections or OIS due in 2006 – 7 are given in Tables 3 and 3A, overleaf. The tables also give an estimation of the number of revisits which are anticipated to arise from the visits.

Table 3

Band	Number of Premises to be inspected to meet the LAC 67/1 timescale			Estimation % (No.) of revisits to check compliance	Total Number of Visits
	Health & Safety Group	Food Safety Group	Total		
A	18	76	94	50% (47)	141
B1	30	40	70	30% (21)	91
B2	28	36	64	20% (13)	77
Total	76	152	228	(81)	309

Table 3A

Band	Number of Premises to receive an OIS within the LAC 67/1 timescale			Estimation % (No.) of revisits to check compliance	Total Number of Visits
	Health & Safety Group	Food Safety Group	Total		
B3	60	38	98	10% (10)	108
B4	41	29	70	10% (7)	77
C	199	55	254	5% (13)	267
Total	300	122	422	(30)	452

2.4.7 Officers of the Food Control Group work to the same procedures and standards as those of the Health and Safety Group but call upon their expertise when dealing with more specialist or complex issues.

2.5 Access to Health and Safety Enforcement Officers

2.5.1 The Health and Safety and Food Control Groups are located in the Clemitson House. Service users may contact officers in the following ways:

- In person – Town Hall One-Stop-Shop, 8.00 a.m. - 6.00 p.m. Monday to Friday (from 10.00 am on Wednesdays).
- By telephone between 9.00 a.m. to 5.00 p.m.
- By e-mail: environmentalhealth@luton.gov.uk

2.6 Factors impacting on Health and Safety Enforcement Service Delivery

- 2.6.1 The following factors have significant impact on the delivery of Health and Safety Enforcement

Internal

- 2.6.2 The Food Group will have a vacancy rate of approximately 38% from 1st April 2006.

2.6.3 A failure to recruit to these posts will result in the service not meeting the resource requirements of this Service Plan.

External

- 2.6.4 Language and training issues arising from the fact that a number of proprietors do not have English as a first language.
- 2.6.5 Officers of the Health and Safety and Food Groups deal with all aspects of Public Health enforcement in all business premises in Luton, except those owned and operated by the Council. These issues (especially those relating to rubbish accumulations and rodents) present a significant draw on their time deflecting them from Health and Safety Enforcement activities. (For example, approximately 5.5% of Service Requests relate to Rubbish/Refuse issues).
- 2.6.6 In November 2005, the Food Standards Agency issued a new Code of Practice (in draft) in preparation for the new Hygiene Directive, which came into force 1st January 2006. Both documents will result in changes requiring a considerable amount of Food Control Officers' time and will impact upon the time available for Health and Safety inspections in premises registered under Food Safety Law.

2.7 Enforcement policy

Health and Safety Enforcement is carried out in accordance with Guidelines issued by the HSE. Copies of the Council's Enforcement Policy are distributed to businesses following inspections, is available on request and also via the Council's website, www.luton.gov.uk. The Policy embraces the principles of the Enforcement Concordat and has regard to the Crown Prosecution Service Guidelines. It was approved and adopted by the Council in April 2000. It is also available in Bengali, Urdu and Turkish and can be translated into other languages and made available in Braille or on audio tape.

- 2.7.1 In addition, it is a requirement of the Guidance issued by the HSC under Section 18 of the Health and Safety at Work etc., Act 1974 that due regard is also given to the Commission's Statement on Enforcement Policy – see **Appendix 9.**

2.8 Monitoring service standards

2.8.1 Service standards for health and safety law enforcement will be monitored by questionnaires:

- given to all business proprietors following an inspection;
- sent to a 100% of people who have registered a Service Request, on a monthly basis; or
- given to all candidates attending either the various Foundation Certificate Courses or in Risk Assessment General Principles and Practice.

2.8.2 It has become apparent that there is a “barrier” (real or perceived) to businesses contacting Environmental Health on health and Safety matters. To address this, and as a result of a successful bid for funding, the Health & Safety Laboratory will underwrite a project during 2006/7, on behalf of the Health & Safety Group, to identify the most appropriate methods of contact.

SECTION 3 : SERVICE DELIVERY

3.1 Health and Safety Enforcement premises visits

3.1.1 It is the Council's policy to ensure that inspection activity is focused to comply with HELA guidance issued in LAC 67/1 rev 3, giving greater priority to target those premises where trends in service requests and national accident statistics indicate emerging or established problems.

3.1.2 Inspections are carried out and premises risk assessed using guidance given in LAC 67/1 rev 3, to determine the priority and nature of future Health and Safety Intervention Strategies. The revisions contained in the HELA Guidance have resulted in a significant shift away from routine inspections, to a mixture of Programmed Inspections and greater use of OIS.

3.1.3 From April 2006, programmed Inspections will now only be carried out in the higher risk premises (Risk Bands A, B1 & B2), and will concentrate on the HSE's identified Priority Topic Inspection regime, i.e. addressing those issues which have the greatest contribution to national accidents and ill-health reported in the workplace; viz. –

- Slips, trips and falls
- Musculo-skeletal Disorders
- Falls from Heights
- Workplace Transport
- Workplace-induced Stress

Where any of these issues are identified in the workplace they will form the basis upon which the inspection is carried out.

3.1.4 Premises rated as posing lower risks (Risk Bands B3, B4, and C) are to be addressed by way of an OIS. This allows programmes to be introduced which best fulfils the Council's enforcement obligations yet meets the expectations of the HSE's 'Fit3' campaign, by building upon the Priority Topic Inspection Regime. Such programmes can include, -

- Health And Safety Performance Self-assessment Questionnaire
- Targeting a particular business sector or geographical area within the borough
- Development of Health & Safety Newsletters
- Hosting Seminars
- Development of a Health & Safety Teaching Programme, e.g. CIEH courses
- Area Surveys and inspections in conjunction with the HSE

3.1.5 **Appendix 7** gives details of the HSE's Fit3 campaign.

3.1.6 **Appendix 8** gives details of Luton Borough Council's OIS projects for 2006/7.

3.1.7 All officers undertaking premises inspections or other interventions and giving advice are suitably and appropriately qualified, being Environmental Health Officers (EHO) registered with the Environmental Health Registration Board and competent in Health and Safety, or Technical Officers equally competent in Health and Safety enforcement.

3.1.8 A Self-Assessment Questionnaire will be sent to all Category A, B1 or B2 food registered premises due to be inspected before March 2007, and assessed using the procedure adopted by the Health and Safety Group. This will enable a consistency of assessment in all business premises within Luton.

3.1.9 To enable the service to implement the objectives of the LAC 67/1 rev 3, and to achieve the inspection rates as stated in Tables 3 and 3A (above), **3.39 Full Time Equivalent (FTE)** Officers are required.

3.2 Accident/Dangerous Occurrence Notifications

3.2.1 Accident and Dangerous Occurrence Notifications are received either direct from the person making the notification or via the National Incident Contact Centre (ICC) at Caerphilly. The latter pass on notifications by:-

- Telephone in the case of Fatalities/Defined Dangerous Occurrences
- Fax for defined Major Injuries
- Secure website for 'Over 3-day' Injuries/Notifiable Diseases

See **Appendix 3** for examples of defined "Major Injuries" and "Dangerous" Occurrences

3.2.2 On receipt, notifications are assessed against an adopted investigation criteria (See **Appendix 4**). Those deemed necessary to investigate, receive an initial assessment contact (telephone call/visit) according to the following priorities:

- Fatalities and Dangerous Occurrences – as soon as practicable after receipt but within 1 day maximum
- Major Injuries – within 1 day
- 'Over 3-day' Injuries – within 3 days

3.2.3 An estimated **170** notifications will be received in 2006/7 of which **25% (50)** will fall into one of the criteria for investigation. The corresponding resource requirement will be **0.23 FTE** officers.

3.3 Service Requests/Complaints

3.3.1 Based on data from previous years it is likely that the total number of Service Requests/Complaints that will be received by the Health and Safety Group in 2006/7 will be **590**, an estimated 19% increase on the 2005/6 figure.

3.3.2 The assessment of staff resources required for Health and Safety Enforcement needs to be adjusted to take into account the workload res ^{*LBC}
CE Press & PRulting from Pro-Active and Re-Active Health and Safety Enforcement issues.

Workplace Health and Safety Issues

3.3.3 Service Requests relating to Workplace Health and Safety issues received by Environmental Health fall into one of the following broad classifications:

- Health and Safety
- Welfare/Environment
- Miscellaneous Health and Safety Issues
- Requests for advice/information

3.3.4 All Health and Safety Service Requests are subject to 3-day response time with the exception of asbestos in the workplace and where there is a risk of imminent personal injury for which 1 day is the response target.

3.3.5 An estimated 240 Workplace/Health and Safety Complaints will be received in 2006/7.

3.3.6 The combined number of Service Requests, 590, requires a resource of **1.30 FTE** officers.

Non -Workplace Health and Safety Issues

3.3.7 Of the estimated 590 Service Requests 39% (232) are likely to relate to non-Workplace issues, typically:

- Refuse and Rodents
- Non-commercial Asbestos
- Drainage issues
- Other non-Health and Safety issues

3.3.8 All Service Requests are subject to 3-day response time with the exception of those relating to drainage which has a 1-day response target.

3.4 Health and Safety Lead Authority Partnership Scheme

3.4.1 The Health and Safety Lead Authority Partnership Scheme (LAPS) is co-ordinated by the Local Authority Unit (LAU) of the HSE to promote health and safety in multi-outlet businesses in different Local Authority areas. It also gives Local Authorities a point of contact on matters relating to the company's Health and Safety policy. Each partnership involves a business and a Local Authority working together to fulfil the aims of the LAPS.

3.4.2 When officers find issues relating to Health and Safety Policy matters at a premises occupied by a national multi-outlet business, they are required to check the HELA listing of LAPS partnerships and, if a one exists, contact the relevant Local Authority partner to address the matter.

3.4.3 Luton has a LAPS Partnership with Debenhams Stores Plc which was set up in 1999 and endorsed by elected members. As a result, Officers meet regularly with representatives of Debenhams and also liaise with Officers of other Local Authorities on issues of national significance affecting the firm's policy.

3.4.4 Negotiations are currently underway with another major business in the borough to explore the possibilities of developing a LAPS partnership.

3.4.5 It is estimated that **0.6 FTE** officers will be engaged in LAPS issues either as a 'Partner' in the scheme, or when contacting other local authority LAPS partners, during 2006/7. This represents a significant increase over the figure for 2005/6 resulting from the negotiations required to establish a new LAPS.

3.5 Advice to businesses

3.5.1 Officers engaged in health and safety enforcement will work with businesses to help them comply with the law and encourage the use of best practice. This will be achieved through a range of activities including:-

- Advice given during the course of inspections and other visits
- Distributing copies of the "Health & Safety Handbook" (produced on behalf of Environmental Health by a commercial publishing house) and advice leaflets
- Responding to enquiries
- Targeted Mailshots
- Newsletter
- Provision of advice by way of the Council's Website
- Business Seminars.

3.5.2 It is estimated that due to the greater use of seminars as part of the OIS campaigns, but excluding advice during inspections, in excess of **200** enquiries will be received during the year 2006/7 which will require a staffing resource of **0.3 FTE** officers.

3.6 Consistency of Enforcement

3.6.1 The Council is committed to ensuring the enforcement approach it takes is consistent with that of other local authorities and the HSE. Accordingly, dialogue on enforcement matters takes place through the following forums:

- Herts & Beds Environmental Health Group (HEBEG);
 - Occupational Health & Safety Group
 - Other sub-groups
- Health & Safety Executive (Northern Home Counties Office);
 - Enforcement Liaison Seminars
 - Eastern Region Forum (HSE/Local Authority Partnership)
- Local Authority Unit
- LACoRS

3.6.2 It is estimated that during the year 2006/7 this activity will require a staffing resource of **0.11 FTE** officers.

3.7 Health & Safety Promotion

3.7.1 Health & Safety Promotional work will be undertaken during the year 2006/2007, principally by the provision of the Chartered Institute of Environmental Health (CIEH) Foundation Certificate Courses in Health & Safety and in Risk Assessment Principles and Practice.

3.7.2 The effectiveness of the training given for the CIEH Certificate Courses will be assessed by way of the completion of an evaluation sheet by candidates at the end of each course.

- 3.7.3 A significant aspect of the OIS programme involves Health and Safety promotional work. This is targeted to the appropriate businesses contacted as part of each campaign.
- 3.7.4 Elected Member Briefing Notes, regular press releases and the attendance at various public forums and training days will also take place.
- 3.7.5 It is estimated that promotional activities during the year 2006/2007 will require a staffing resource of **0.30 FTE** officers.

SECTION 4 : STAFFING RESOURCES

4.1 Staffing allocation

- 4.1.1 The estimated staffing profile for all officers having a health and safety enforcement role is set out below:

Grade of Post	FTE
Environmental Health Group Manager (Commercial)	0.5
Principal Environmental Health Officer (Health & Safety)	0.6
Environmental Health Officer (Health & Safety)	0.75
Technical Officer (Health & Safety)	0.5
Principal Environmental Health Officer (Food Control)	0.1
Environmental Health Officers (Food Control)(3 Officers at 0.3 FTE per Officer)	0.9
Administrative staff	0.25
TOTAL	3.6

4.2 Maintenance of Staff Competency and Staff Development Plan

- 4.2.1 All Officers undertaking premises inspections, OIS work or who give advice, are suitably and appropriately qualified and competent. To maintain the necessary level of competence, Officers undertake training, attend appropriate courses and participate in peer assessment review.
- 4.2.2 Less experienced Officers will undertake a programme of shadowing to ensure their level of competency meets the desired standard.
- 4.2.3 During 2006/2007 every effort will be made to give all officers access to equivalent update training.
- 4.2.4 The training structure includes:
- attending external and in-house competency-based training (e.g. inspection techniques, technical and legal issues)
 - identification of training needs during annual Performance Appraisal and Development interviews
 - assessing training outcomes as part of the Council's Investors in People (IiP) arrangements

- 4.2.5 An estimated 27 days has been allocated for the training of Health and Safety Enforcement Officers the Group, equating to approximately a staffing resource of **0.12 FTE** officers.

SECTION 5 : QUALITY ASSESSMENT

5.1 Quality Assessment

- 5.1.1 The following monitoring arrangements are in place to assist in the quality assessment of the work carried out:

- evaluation questionnaire given to all businesses after an inspection
- evaluation questionnaire given to all candidates attending training
- review by the Principal Environmental Health (Health & Safety) of post-inspection paperwork including the Priority Risk Assessment sheets
- peer Group assessment of inspections – at least one per officer per year
- fortnightly team meetings, including a case review
- individual meetings (1 to 1) with the Principal Environmental Health Officer (Health & Safety) to give monitoring feedback.
- annual Performance Appraisal and Development interviews.
- participation in a Herts & Beds Inter-Authority Auditing Scheme
- the use of the HSE approved Enforcement Management Model to independently assess the decision making process.
- the development and use of approved Standard Operating Procedures

SECTION 6 : REVIEW

6.1 Review against the Service Plan

- 6.1.1 Performance indicators covering response times to complaints and the level of programmed inspections form part of the Council's Local Performance Plan, which is subject to quarterly review by senior management and the Executive. Information on the key Best Value Performance Plan performance indicators is listed in **Appendix 1**.

- 6.1.2 The Health & Safety Law Enforcement Service Plan will be reviewed by the Environmental Health Group Manager (Commercial) in line with the corporate planning timetable.

6.2 Identification of any variation from the Service Plan

- 6.2.1 Key performance indicators listed in **Appendix 1** are reviewed on a quarterly basis. Results are formally reported along with reasons for any significant variation and an action plan setting out remedial action.

6.3 Areas of improvement

- 6.3.1 Any service issues identified during the quarterly reviews or by routine performance monitoring will be recorded in writing and an appropriate action plan to address those service issues agreed with the Head of Environmental and Consumer Services.

APPENDIX A

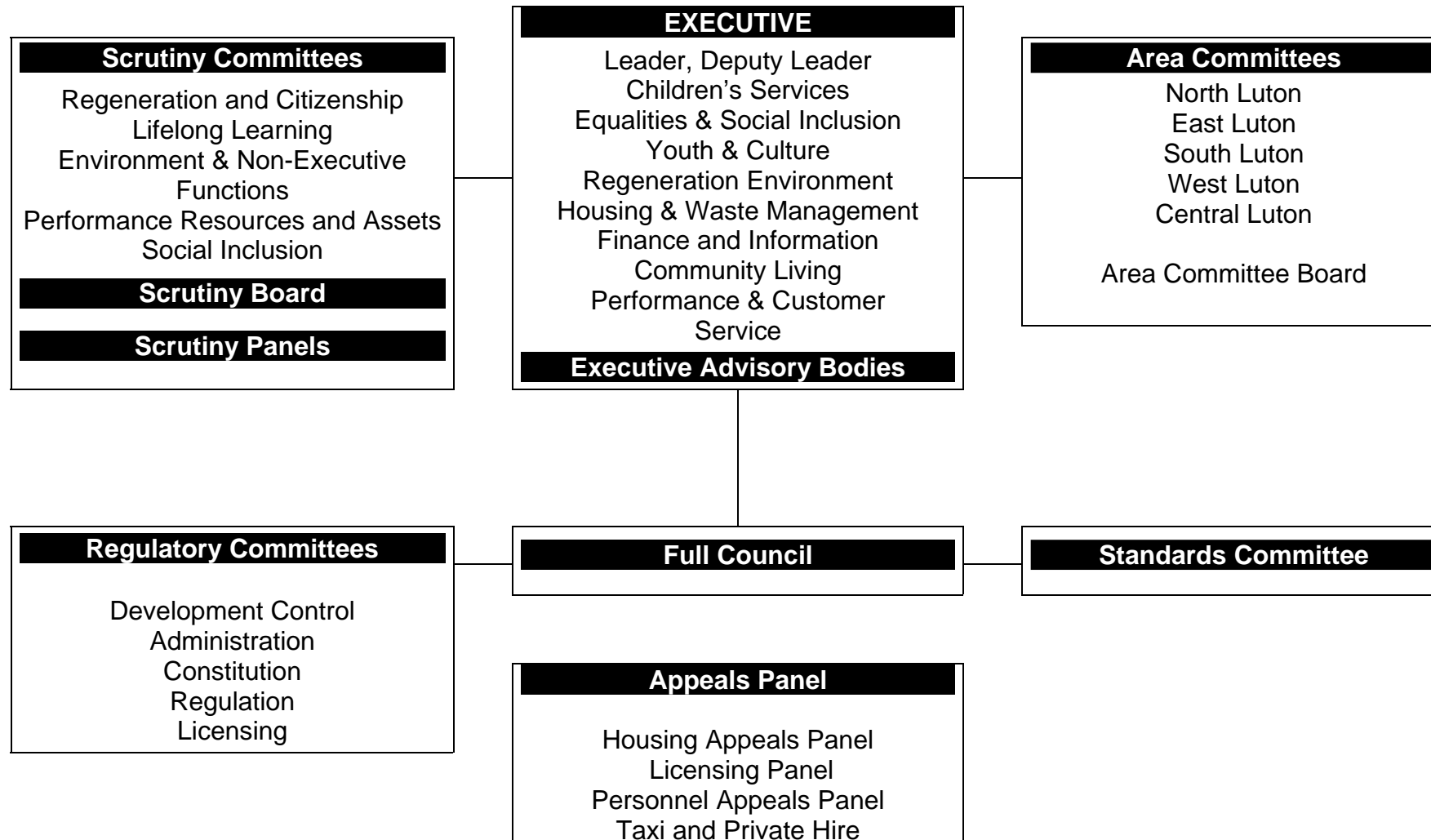
APPENDIX 1

BEST VALUE PERFORMANCE PLAN

RESULTS OF KEY PERFORMANCE INDICATORS – HEALTH & SAFETY ENFORCEMENT

Description	BVPP indicator	Performance 2005/6 (estimate))	Target 2006/7
Score against a checklist of enforcement best practice for environmental health and trading standards (Maximum score = 100%).	This checklist sets out requirements for an enforcement policy, systems and procedures for specific enforcement activities and asking for service user feedback.	98%	100%
Response times within targets to health & safety related service requests.	<p>Performance indicator for ECS in section 4 of the divisional service plan (ER70 - Performance Indicator table).</p> <p>Response times for Health & Safety related service requests are:</p> <p>1 day : Urgent health and safety and public health issues.</p> <p>3 days : Routine service requests.</p> <p>2 days : Routine service requests (from April 2006)</p>	<p>97.5% (target 100%)</p> <p>98.73% (target 97.5%)</p> <p>New indicator</p>	<p>100%</p> <p>97.5%</p> <p>80%</p>
Business satisfaction, measured through inspection response questionnaires.	New local performance indicator from April 2006 (ref: ER79).	New indicator	90%

APPENDIX 2 – Elected Member Structure



**REPORTING OF INJURIES, DISEASES
AND DANGEROUS OCCURRENCES
REGULATIONS 1995**

Defined Major Injury includes:-

- Fracture other than to fingers, thumbs or toes;
- Amputation;
- Dislocation of the shoulder, hip, knee or spine;
- Loss of sight (temporary or permanent);
- Chemical or hot metal burn to the eye or any penetrating injury to the eye;
- Injury resulting from electric shock or electrical burn leading to unconsciousness or admittance to hospital for more than 24 hours;
- Any injury leading to hypothermia, heat-induced illness or unconsciousness; or requiring resuscitation; or admittance to hospital for more than 24 hours;
- Unconsciousness caused by asphyxia or exposure to a harmful substance or biological agent;
- Acute illness requiring medical treatment, or loss of consciousness arising from absorption of any substance by inhalation, ingestion or through the skin;
- Acute illness requiring medical treatment where there is reason to believe that this resulted from exposure to a biological agents or its toxins or infected material.

Principal Defined Dangerous Occurrences

- Collapse, overturning or failure of load-bearing parts of lifts and lifting equipment;
- Explosion, collapse or bursting of any enclosed vessel or associated pipework;
- Plant or equipment coming into contact with overhead power lines;
- Electrical short circuit or overload causing fire or explosion;
- Collapse or partial collapse of a scaffold over 5m high, or erected near water where there could be risk of drowning

Notifiable Diseases

Certain poisonings;

- Some skin diseases including occupational dermatitis, skin cancer and oil acne
- Some lung diseases including occupational asthma, asbestosis and mesothelioma;
- Some infectious diseases including leptospirosis, hepatitis and tetanus
- Certain occupational conditions such as cancers, musculoskeletal disorders and hand-arm vibration syndrome.

ACCIDENT/DANGEROUS OCCURRENCE INVESTIGATION CRITERIA

Category 1 - Investigate without qualification.

- Death

Category 2 - Why not investigate?

- Dangerous Occurrences
- Major injuries to Employees
- Major injuries to Members of the Public
- “Over three-day” injuries of the same type in the same organisation
- “Over three-day” injuries to the same employee
- Notification of a Disease

Category 3 - Why investigate?

- Members of the public taken to hospital for other than a Major injury
- “Over three-day” injuries

Category 4 - “Wild Cards”

- Notifications that do not fall into either Category 2 or 3 but which in the opinion of the evaluating Officer, using his/her knowledge of the premises/organisation, warrant investigation.

APPENDIX 5**PREMISES INSPECTION PROGRAMME –2006 - 2007**

Note: All figures are estimations based on the data available on 14th February 2006. Accurate inspection figures will not be available until after 31 March 2006 when the current inspection programme is completed and all associated data logged and reviewed under LAC 67/1 Rev 3.

Health & Safety Group

Risk Band (inspection interval)	Estimated No. of inspections due	Estimated % to be done	Target no. of inspections	Estimate % (No.) of revisits to check	Total Visits
A (12 months)	18	100%	18	50% (9)	27
B1 (18 months)	45	66%	30	30% (9)	39
B2 (24 months)	56	50%	28	20% (7)	35
Totals	119	N/A	76	25	101

Food Group

Risk Band (inspection interval)	Estimated No. of inspections due	Estimated % to be done	Target no. of inspections	Estimate % (No.) of revisits to check	Total Visits
A (12 months)	76	100%	76	50% (38)	114
B1 (18 months)	61	66%	40	30% (12)	52
B2 (24 months)	71	50%	35	20% (7)	42
Totals	208	N/A	151	57	208

APPENDIX 6**ESTIMATED STAFFING RESOURCES REQUIRED – 2006 - 2007**

*All calculations assume 1 Full Time Equivalent (FTE) = 220 working days.
Estimates include revisit activity.*

<u>Activity</u>	Days	FTE
<u>Priority Programmed Topic Inspections</u>	303	1.38
<u>Other Intervention Strategies (OIS)</u>		
HELA Strategy Items		
Database Update Surveys		
European Health & Safety Week	443	2.01
Sub-Total	746	3.39
<u>Accident Investigations</u>	51	0.23
<u>Health and Safety Service Requests/Complaints</u>	286	1.30
<u>Lead Authority Partnership issues</u>	132	0.60
<u>Advice to Business/Enquiries</u>	66	0.30
<u>Consistency of Enforcement /</u>	24	0.11
<u>Liaison with other Organisations</u>		
<u>Promotional Activities</u>	66	0.30
<u>Officer Training</u>	27	0.12
Sub-Total	651	2.96
<u>Quality Assurance Issues</u>		
Feedback Questionnaires (5 days)		
Peer Assessment (3 days)		
Team Meetings (20 days)		
Workload Meetings (9 days)		
Appraisal Meetings (2 days)		
Sub-Total	39	0.18
Grand Total	1437	6.53

Total estimated staffing resource required = 6.53 FTE

Estimated total resource in Health & Safety Group for 2006/7

Grade of Post	FTE
Environmental Health Group Manager (Commercial)	0.5
Principal Environmental Health Officer (Health & Safety)	0.6
Environmental Health Officer (Health & Safety)	0.75
Technical Officer (Health & Safety)	0.5
Principal Environmental Health Officer (Food Control)	0.1
Environmental Health Officers (Food Control)(3 Officers at 0.3 FTE per Officer)	0.9
Administrative staff	0.25
TOTAL	3.6

CONCLUSION

The resources required in the year 2006-2007 are estimated to be the **2.93 FTE** Officers less than the resources earmarked for Health and Safety Enforcement.

MARCH 2006

APPENDIX 7

‘Fit for Work, Fit for Life, Fit for Tomorrow’ HSE’s Strategic Delivery Programme for 2005/6 – 2007/8

As part of the Health and Safety Executive’s (HSE) strategic campaign to try to reduce the incidence of work related deaths, injuries or accidents before 2010, they have introduced new ways of working for both themselves and Local Authorities (LA’s). The most significant change is the way in which businesses are to be targeted to try to achieve a more effective way of ensuring standards are met.

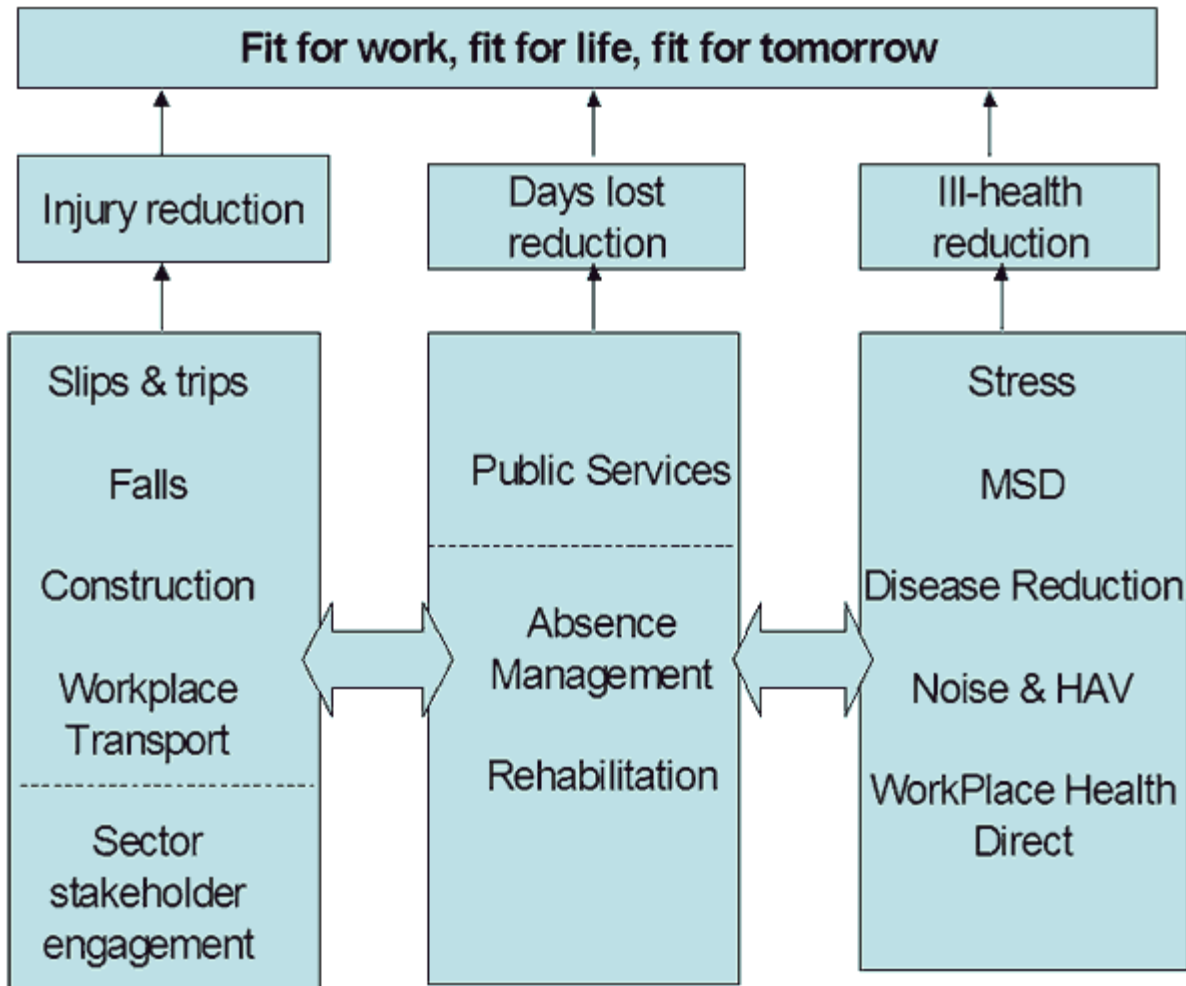
It has been recognised, that after 30 years of the Health and Safety at Work etc. Act, 1974, the rate of improvements in Health and Safety in the workplace has slowed significantly. Furthermore, the established means by which businesses were contacted and inspected, has also been shown to be less effective. As a result, the HSE has developed the Fit 3 programme.

The information below has been taken from the HSE’s Strategic Delivery Programme for 2005/6 – 2007/8, and provides a guide for the Fit 3 programme.

To access the full Strategic Delivery Plan, use the link below:

<http://www.hse.gov.uk/aboutus/plans/hscplans/0506/fitfor.htm>

“ The ‘Fit3’ Strategic Delivery Programme is based on analysis of injury and ill health generation across known hazard and sector hotspots in businesses, large and small.



1. The Strategic Delivery Programme (SDP) aims to deliver a 3% reduction in the incidence of work-related fatal and major injuries. Major initiatives and interventions planned include:

- Introducing management standards covering all aspects of driver training in **workplace transport**. This will include work to secure cooperation of major stakeholders
- A major communication and publicity campaign on **slips and trips**, supported by special projects and enforcement activity in autumn 2005
- Implementing the **Work at Height Regulations**
- Projects in **construction** that contribute to the targets on falls from height, Musculoskeletal Disorders (MSD), slips and trips, and workplace transport.

2. Fit3 aims to deliver a 6% reduction in the incidence rate of cases of work-related ill health. Major initiatives planned, as a contribution to rising to the challenge of occupational health, include:

- A major communication campaign on **musculoskeletal disorders**, which includes piloting the 'Backs Week' projects designed to reduce the incidence of manual handling injuries
- Rolling out the management standards for **stress** across key sectors, including the public sector
- Launching the Workplace Health Direct advice line and selecting partners to pilot new **occupational health support** services, to provide accessible advice and support
- Targeted initiatives to reduce the **incidence of skin disease** in the hairdressing and beauty sectors
- Targeted initiatives to reduce the **incidence of occupational asthma** in the manufacture, woodworking, and health services
- Introducing new **Vibration** Regulations and **Noise** Regulations.

3. The SDP also aims to deliver a 9% reduction in the incidence rate of days lost due to work-related injuries and ill health. We will achieve this by targeting the **public sector**. The Stress, MSD, Slips and Trips and Construction Programmes will deliver significant contributions. Major initiatives planned also include:

- Developing, monitoring and influencing the implementation of the Ministerial Task Force on Health, Safety and Productivity delivery plan, in which we are working closely with Cabinet Office and HM Treasury
- Raising the profile of sickness absence management in the health and safety and human resource cross-government officials network.

4. Enabling work underpins each of the programme blocks, described in more detail at paragraphs 31 to 38 (see full text at HSE's website). This will be crucial to maximising the benefit and effectiveness of interventions within Fit3. HSE will seek to exploit links between itself and other government departments - for example, with DWP in the reform of incapacity benefit, with Department of Health on the health agenda following the *Choosing Health* White Paper, and with Ministerial Task Force departments on the Public Services Programme.

5. The SDP's three main blocks are aligned with the three components of the Revitalising Health & Safety and Public Service Aggrement (PSA) targets, i.e. injury reduction, ill health reduction and reduction in days lost. By aligning our activity in

this way, Fit3 is best placed to deliver the occupational health and safety PSA targets. HSE's Field Operations Directorate (FOD) will support all three work blocks through a mixture of specific projects and topic-based inspection.

6. The programmes of work will include a mix of interventions, ranging from the innovative and original to the well tried and proven. Recent developments in FOD's front-line intervention capacity, including the introduction of more Health and Safety Awareness Officers, will allow more proactive interventions (as well as maintaining reactive investigations) to reach target groups in more user-friendly ways.

APPENDIX 8

**LUTON BOROUGH COUNCIL
PROPOSED PROGRAMME FOR THE
OTHER INTERVENTION STRATEGY (OIS)
CAMPAIGN**

2006/7

Date	OIS	Target	Partnership Work
April 2006	Slips	Visit to identified premises to carry out survey	HSE
	Luminar LAPS	Sign LAPS agreement	Luminar Leisure
May 2006	Slips	Offer post-enforcement training opportunity	HSE
	Luminar LAPS	To liaise with HSE & other LA's of intention to develop LAPS, plus asking if any specific issues exist	Luminar Leisure & HSE
	Warehousing	a. Identify premises b. To draft & send informative letter & leaflet. Letter to include offer of guidance & teaching c. Development of teaching package	
	Area Survey	Routine Area Survey	HSE
June 2006	Slips	Draft report of campaign	HSE
	Luminar LAPS	Undertake limited Safety Management review (SMR) plus arrange visits to approx 5% of premises (10 to 15). Total number to be inspected dependant upon survey results	Luminar Leisure
	Warehousing	Visit to identified premises to carry out survey	

Date	OIS	Target	Partnership Work
July 2006	Slips	Complete OIS (pending any enforcement issues)	Luminar Leisure
	Luminar LAPS	Visits to 5% target premises	
	Warehousing	Visit to identified premises to carry out survey	
	Area Survey	Routine Area Survey	HSE
	Backs 2006	a. Identify premises b. To draft & send informative letter & leaflet. Letter to include offer of guidance & teaching c. Development of teaching package	HSE
August 2006	Luminar LAPS	Review visits thus far	Luminar Leisure
	Warehousing	a. Visit to identified premises to carry out survey b. Invite those premises enforced against to training seminar	
September 2006	Luminar LAPS	Complete visits to 5% target premises	Luminar Leisure
	Warehousing	Visit to identified premises to carry out survey	
	Storing Xmas	a. Identify premises b. To draft & send informative letter & leaflet. Letter to include offer of guidance & teaching c. Develop teaching package	
	H&S Week	Prepare for H&S Wk 'Young Persons'	HEBEG & HSE
	Area Survey	Routine Area Survey	HSE

Date	OIS	Target	Partnership Work
October 2006	Luminar LAPS	Draft SMR report	Luminar Leisure
	Warehousing	a. Invite those premises enforced against to training seminar b. Draft report of campaign	
	Storing Xmas	Visit to identified premises to carry out survey	
	H&S Week	Take part in 'Young Persons' activities if appropriate	HEBEG & HSE
	Backs 2006	Visit to identified premises to carry out survey	HSE
November 2006	Luminar LAPS	a. Draft SMR report b. Send SMR report	Luminar Leisure
	Warehousing	Complete OIS (pending any enforcement issues)	
	Storing Xmas	Visit to identified premises to carry out survey	
	Stress	Arrange dates for display in Arndale	Arndale Management
	Area Survey	Routine Area Survey	HSE
	Backs 2006	Visit to identified premises to carry out survey	HSE
December 2006	Storing Xmas	Visit to identified premises to carry out survey	
	Stress	a. Identify premises b. To draft & send informative letter & leaflet. Letter to include offer of guidance & teaching c. Development of teaching package	Arndale Management

Date	OIS	Target	Partnership Work
January 2007	Luminar LAPS	Assess Luminar's response to SMR report (if received)	Luminar Leisure
	Storing Xmas	a. Invite those premises enforced against to training seminar b. Draft report of campaign	
	Stress	Attend display in Arndale, & visit to identified premises to assess compliance	Arndale Management
	Area Survey	Routine Area Survey	HSE
	Backs 2006	Any follow-up work as result of inspections, e.g. training	HSE
February 2007	Storing Xmas	Complete OIS (pending any enforcement issues)	
	Stress	Visit to identified premises to carry out survey	Arndale Management
March 2007	Stress	a. Draft report of campaign b. Complete OIS (pending any enforcement issues)	Arndale Management
	Area Survey	Routine Area Survey	HSE

APPENDIX 9

Abstract of Health & Safety Commission Enforcement Policy available at:
<http://www.hse.gov.uk/pubns/hsc15.pdf>

Enforcement Policy Statement Health & Safety Commission

Introduction

The Health and Safety Commission's (HSC) aims are to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.

HSC's statutory functions include proposing new or updated laws and standards, conducting research, and providing information and advice. HSC is advised and assisted by the Health and Safety Executive (HSE) which has statutory responsibilities to make adequate arrangements for the enforcement of health and safety law in relation to specified work activities. Local authorities also enforce health and safety law in workplaces allocated to them – including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.

This Enforcement Policy Statement sets out the general principles and approach which HSC expects the health and safety enforcing authorities (mainly HSE and local authorities) to follow. All local authority and HSE staff who take enforcement decisions are required to follow HSC's Enforcement Policy Statement. In general, those staff will be inspectors, so this policy refers to inspectors for simplicity.

The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare.

In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published in HSC's and the HSE/Local Authority Enforcement Liaison Committee's (HELA) strategic plans, and the need to maintain a balance between enforcement and other activities, including inspection.

The Health and Safety Commission's Policy Statement on Enforcement

The following is the full text of the statement:

The purpose and method of enforcement

1. The ultimate purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between enforcing authorities and those on whom the law places duties (employers, the self-employed, employees and others).

2. The purpose of enforcement is to:

- Ensure that duty holders take action to deal immediately with serious risks;
- Promote and achieve sustained compliance with the law;
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in England and Wales, or recommending prosecution in Scotland, in the circumstances set out later in this policy.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

3. The enforcing authorities have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders information, and advice, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue formal cautions¹ (England and Wales only), and they may prosecute (or report to the Procurator Fiscal with a view to prosecution in Scotland).

4. Giving information and advice, issuing improvement or prohibition notices, and withdrawal or variation of licences or other authorisations are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm. A prohibition notice stops work in order to prevent serious personal injury. Information on improvement and prohibition notices should be made publicly available.

¹ A formal caution is a statement by an inspector, that is accepted in writing by the duty holder, that the duty holder has committed an offence for which there is a realistic prospect of conviction. A formal caution may only be used where a prosecution could be properly brought. 'Formal cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act by an inspector before questioning a suspect about an alleged offence. Enforcing authorities should take account of current Home Office guidelines when considering whether to offer a formal caution.

5. Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and prohibition notices, and written advice, may be used in court proceedings.

6. Formal cautions and prosecution are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, enforcing authorities should use one of these measures in addition to issuing an improvement or prohibition notice.

7. Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, enforcing authorities should have regard to the principles of enforcement set out in this statement and the objectives published in HSC and HELA strategic plans. In particular, in allocating resources, enforcing authorities must strike a balance between investigations and mainly preventive activity.

8. Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPS). These give practical advice on compliance and have a special legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Advice is also contained in other HSC, HSE and HELA guidance material describing good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will need to take relevant ACOPs 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 in this statement.

9. HSC expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. Enforcing authorities should set down in writing the decision-making process which inspectors will follow when deciding on enforcement action, and make this publicly available. HSC expects that such judgements will be made in accordance with the following principles. These are in accordance with *Enforcement Concordat* agreed between the Cabinet, Home and Scottish (now the Scottish Executive) Offices and local authority associations.

The principles of enforcement

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

Proportionality

11. Proportionality means relating enforcement action to the risks.² Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

12. In practice, applying the principle of proportionality means that enforcing authorities should take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

13. Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. Enforcing authorities should apply the principle of proportionality in relation to both kinds of duty.

14. Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, enforcing authorities considering protective measures taken by duty holders must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

15. The authorities will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

² In this policy, 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.

16. Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

Targeting

17. Targeting means making sure that contacts are 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.

18. HSC expects enforcing authorities to have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that enforcing authorities can give public assurance that such risks are properly controlled.

19. Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

20. When inspectors issue improvement or prohibition notices; withdraw approvals; vary licence conditions or exemptions; issue formal cautions; or prosecute; enforcing authorities should ensure that a senior officer of the duty holder concerned, at board level, is also notified.

Consistency

21. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

22. Duty holders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to incidents.

23. HSC recognizes that in practice consistency is not a simple matter. HSE and local authority inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. 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

24. 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.

25. Transparency also involves the enforcing authorities in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.

26. This statement sets out the general policy framework within which enforcing authorities should operate. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. All enforcing authority inspectors are required to issue the HSC leaflet "*What to expect when a health and safety inspector calls*" to those they visit. This explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace. In particular:

- when inspectors offer duty holders information, or advice, face to face or in writing, including any warning, inspectors will tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;
- in the case of improvement notices the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and that in the inspector's opinion a breach of the law has been committed;
- in the case of a prohibition notice the notice will explain why the prohibition is necessary.

In addition, in response to *Service First* HSE has issued two publications, *The Health and Safety Executive: Working with employers* and *The Health and Safety Executive and you*, which reflect the principles of the *Enforcement Concordat*.

Accountability

27. Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

28. HSE's procedures for dealing with comments and handling complaints are set out in the publications referred to in paragraph 26. In particular, they:

- describe a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and
- explain about the right of appeal to an Employment Tribunal in the case of statutory notices.

29. Local authorities have their own complaints procedures – details are available from individual authorities.

Investigation

30. **As with prosecution, HSC expects enforcing authorities to use discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. Indicative targets related to levels of investigation by HSE are normally specified in HSC's Strategic Plan, which is approved by the Government. HSC's priorities are also reflected in the HELA Strategy which is used by local authorities to target their activities and resources, via their Departmental Service Plans.**

31. Investigations are undertaken in order to determine:

- causes;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- lessons to be learnt and to influence the law and guidance;
- what response is appropriate to a breach of the law?

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. HSC's Strategic Plan recognizes that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

32. The enforcing authorities should carry out a site investigation of a reportable work-related death, unless it is an instance of adult trespass or apparent suicide on the railway³ or there are other specific reasons for not doing so, in which case those reasons should be recorded.

³ *Where the police will always investigate and advise HSE if railway operational matters are at issue.*

33. In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, the enforcing authorities should take into account of the following factors:

- the severity and scale of potential or actual harm;
- the seriousness of any potential breach of the law;
- knowledge of the duty holder's past health and safety performance;
- the enforcement priorities;
- the practicality of achieving results;
- the wider relevance of the event, including serious public concern.

Prosecution

England and Wales

34. In England and Wales the decision to proceed with a court case rests with the enforcing authorities. Enforcing authorities must use discretion in deciding whether to bring a prosecution.

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

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

Scotland

37. In Scotland the Procurator Fiscal decides whether to bring a prosecution. This may be on the basis of a recommendation by an enforcing authority; although the Procurator Fiscal may investigate the circumstances and institute proceedings independently of an enforcing authority. Enforcing authorities must use discretion in deciding whether to report to the Procurator Fiscal with a view to prosecution. The Crown Office and the Procurator Fiscal Service endorse this Statement by HSC, and

acknowledge that action on reports of offences submitted to them by the enforcing authorities should reflect the approach set out here.

38. In Scotland, before prosecutions can be instituted, the Procurator Fiscal will need to be satisfied that there is sufficient evidence and that prosecution is in the public interest. In Scotland therefore the decision as to proceedings is one for the prosecutor rather than the enforcing authority whose views will, however, be taken into account.

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

- death was a result of a breach of the legislation;⁴
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without or in serious non-compliance with an appropriate licence or safety case;
- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a formal caution;
- false information has been supplied willfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- inspectors have been intentionally obstructed in the lawful course of their duties.

Where inspectors are assaulted, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.

⁴ *Health and safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence, HSC considers that normally such cases should be brought before the court. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.*

40 HSC also expects that, in the public interest, enforcing authorities will consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- 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, and conviction may deter others from similar failures to comply with the law;
- a breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

Prosecution on individuals

41 Subject to the above, enforcing authorities should identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they should consider the management chain and the role played by individual directors and managers, and should take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where appropriate, enforcing authorities should seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

42. Enforcing authorities in England and Wales should make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. They should also have arrangements for making publicly available information on these convictions and on improvement and prohibition notices which they have issued.

43. Enforcing authorities in England and Wales should also consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial. They should also consider publicizing any conviction which could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law. In Scotland, decisions in relation to publicity of prosecutions are a matter for the Crown Office.

Action by the courts

44 Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. HSC will continue to seek to raise the courts' awareness of the gravity of health and safety offences and of the full extent of their sentencing powers, while recognizing that it is for the courts to decide

whether or not someone is guilty and what penalty if any to impose on conviction. A list of the sanctions presently available to the courts is attached to this statement.

45. In England and Wales, the enforcing authorities should, when appropriate, draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given guidance on some of the factors which should inform the courts in health and safety cases (*R v F Howe and son (Engineers) Ltd* [1999] 2 All ER, and subsequent judgements). HSC notes that the Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted.

Representation to the courts

46 In cases of sufficient seriousness, and when given the opportunity, the enforcing authorities in England and Wales should consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, enforcing authorities should have regard to Court of Appeal guidance: the Court of Appeal has said 'In our judgement magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence'.

47 In Scotland it would fall to the Procurator Fiscal to draw the court's attention to the seriousness of any offence.

Death at Work

48 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).

49 In England and Wales, to ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) have jointly agreed and published *Work-related deaths: A protocol for liaison*. The Local Government Association has agreed that local authorities should take account of the protocol when responding to work-related deaths.

50 The police are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The enforcing authorities are responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the enforcing authorities find evidence suggesting manslaughter, they should pass it on to the police. If the police or the CPS decide not to pursue a manslaughter case, the enforcing authorities will normally bring a health and safety prosecution in accordance with this policy.

51 In Scotland, responsibility for investigating sudden or suspicious deaths rests with the Procurator Fiscal. Unless a prosecution takes place in the same circumstances, the Procurator Fiscal is required to hold a Fatal Accident Inquiry into the circumstances of a death resulting from a work-related⁵ accident. An Inquiry may also be held where it appears to be in the public interest on the ground that the death was sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern.

Crown bodies

52 Crown bodies must comply with health and safety requirements, but they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing health and safety requirements in Crown bodies. These arrangements allow HSE to issue non-statutory improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of enforcement action to take, HSE should follow as far as possible the same approach as for non-Crown bodies, in accordance with this enforcement policy.

Penalties for Health and Safety Offences⁶

The Health and Safety at Work etc Act 1974 (the HSW Act), section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an improvement or prohibition notice, or a court remedy order (issued under the HSW Act sections 21, 22 and 42 respectively):

<i>Lower court maximum</i>	£20,000 and/or 6 months' Imprisonment
<i>Higher court maximum</i>	Unlimited fine and/or 2 years' Imprisonment

⁵ In this case, an accident in the course of employment, if the deceased was an employee, or while engaged in their occupation, if an employer or self-employed person.

⁶ As at January 2002. These penalties can change from time to time.

Breach of sections 2-6 of the HSW Act, which sets out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

Lower court maximum	£20,000
Higher court maximum	Unlimited fine

Other breaches of the HSW Act, and breaches of 'relevant statutory provisions' under the Act, which include all health and safety regulations. These impose both general and more specific requirements, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment:

Lower court maximum	£5,000
Higher court maximum	Unlimited fine

Contravening licence requirements or provisions relating to explosives. Licensing requirements apply to nuclear installations, asbestos removal, and storage and manufacture of explosives. All entail serious hazards which must be rigorously controlled.

Lower court maximum	£5,000
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of the HSW Act sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and safety inspectors draw this power to the court's attention whenever appropriate.

Lower court maximum	5 years' disqualification
Higher court maximum	15 years' disqualification