

## LOCAL AUTHORITY MONITORING DATA ON FOOD LAW ENFORCEMENT

### Executive Summary

1. This paper reports the key findings from the monitoring data provided by local authorities (LAs) throughout the UK on their enforcement of food law in 2003/2004 and in 2004/2005.
2. It also provides a progress report on the project to review the monitoring system for Local Authority food law enforcement.
3. The Board is invited to:
  - **note** the improvements in the level of LA returns, and in the reliability of the data;
  - **discuss** the information on national trends;
  - **note** the information for individual local authorities;
  - **agree** that officials should consider what further support or action should be taken with those LAs which reported the lowest levels of key activities for 2004/2005, or had gaps in their data, on the basis of the current intervention policy, subject to any comments from key stakeholders;
  - **agree** that this information be used in the development of policy on LA enforcement of food law; and
  - **note** the continuing work on the review project, taking account of the principles of the Hampton Report.

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## LOCAL AUTHORITY MONITORING DATA ON FOOD LAW ENFORCEMENT

### Issue

1. This paper reports to the Board:
  - monitoring data from local authorities (LAs) for food law enforcement for 2003/2004 and for 2004/2005; and
  - progress of the project to review the system for monitoring local authority enforcement of food law.
2. This follows on from the previous progress report, presented to the Board in September 2004 (paper FSA 04/09/03).

### Strategic Aim

3. The purpose of collecting and analysing monitoring data on food law enforcement is to contribute to driving up levels of compliance with food law by food businesses.
4. The Agency assesses levels of compliance with food law as part of the "Food Safety" section of the Agency's Strategic Plan. The extent of LAs' actions to enforce compliance with food law is taken as a proxy for business compliance, and used as part of that assessment. However, it is not possible to prove a direct relationship between enforcement action and business compliance. The trends and issues identified from the analysis of monitoring data contribute to the Agency's policies on reducing the levels of foodborne illness, and protecting public health.

### Background

5. Section 12 of Food Standards Act 1999, empowers the Agency to undertake the function of monitoring the performance of enforcement authorities for food law. Under the EU's Official Food and Feed Controls regulation, 882/2004, (previously

the Official Controls Directive, 89/397), the UK government is also required to report relevant food enforcement data to the European Commission.

6. Data is therefore collected in order to:

- monitor levels of enforcement activity, and identify National trends,
- identify LAs who require support and advice to drive up standards;
- publish information for use by consumers;
- report data to the European Commission; and
- provide benchmarking information for LAs themselves to use.

7. Food safety comprises both:

- Food hygiene, which is concerned with the wholesomeness of food, so that it is not unfit for consumption and not injurious to health; and
- Food standards, which is concerned with composition and labelling, dealing with the nature, substance and quality of the food.

## **Context**

8. The Agency has been collecting detailed monitoring information since the year 2000. Most of the past five years have been devoted to the introduction of the monitoring system and to extensive work with LAs to improve the quality and reliability of the data submitted. There has been considerable improvement in the data returned over the last two years.

9. The Agency now intends to focus less on issues of data quality, in order to consider how the data may be used to compare levels of LA enforcement on food law compliance by businesses. The main focus of that work will be to develop policy on LA enforcement, taking account of:

- the principles and themes of the Hampton report;
- the Agency's recent paper on priorities for food law enforcement (paper FSA/10/03, October 2005);

- the information on levels of compliance from the food premises survey; and
- the outcome measures being developed in the review of the monitoring system.

### ***Data Reliability***

10. Historically, there have been questions over the reliability of the data submitted. This was demonstrated in the 2002 figures, when 12% of the 468 LAs in the UK sought to make further changes to data which they had already submitted and confirmed as correct. In February 2004, the Board required officials to pursue an action plan to address these problems and to work in partnership with LAs and other stakeholders, to improve the reliability and accuracy of the data.
11. The action plan was adopted after the end of the 2003 year, so the figures for 2003/2004 were not affected by the changes which began to be made from 2004 onwards.
12. A full list of all the actions taken to address the issue is given in Annex 1. The principle aim was to make the system simpler and easier for LAs to complete accurately.

The key changes are:

- for the 2004/2005 data, the system of quarterly returns was replaced by a single annual return (Annex 1, point 2);
- detailed advice was provided to LAs on the actions they should take to validate their annual data before it is submitted (Annex 1, points 10 and 12); and
- a great deal of hard work was undertaken by the LAs to address the issue, and to secure longer term improvements through two working groups: the Performance Strategy Group (PSG), and the Monitoring System User Group (MSUG). These comprise representatives from LAs, LACORS and the professional bodies.

13. Details of the improvements to the data reliability for 2003 and 2004 are given in Annex 2.

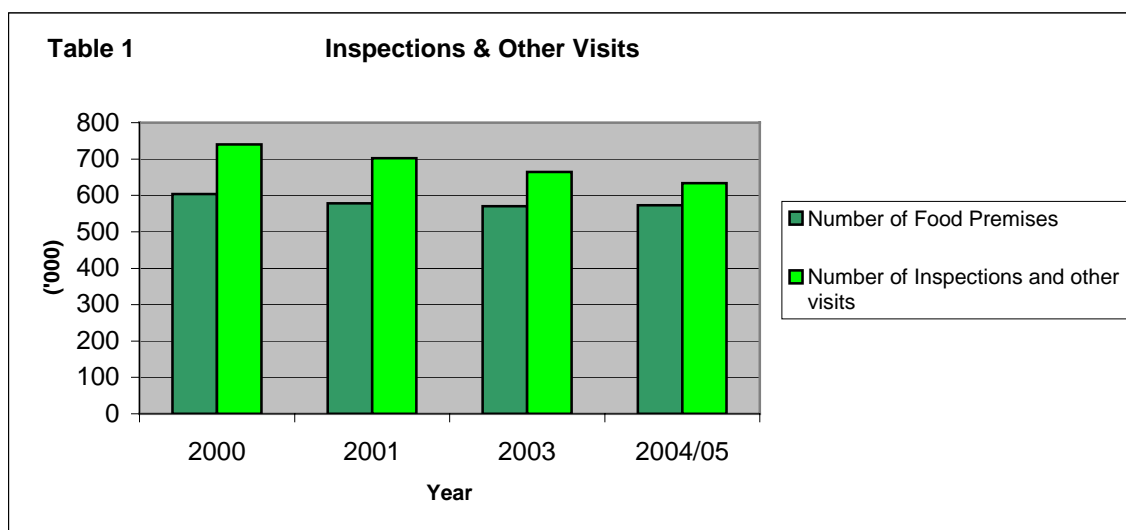
## **Key Findings**

### ***National totals and trends***

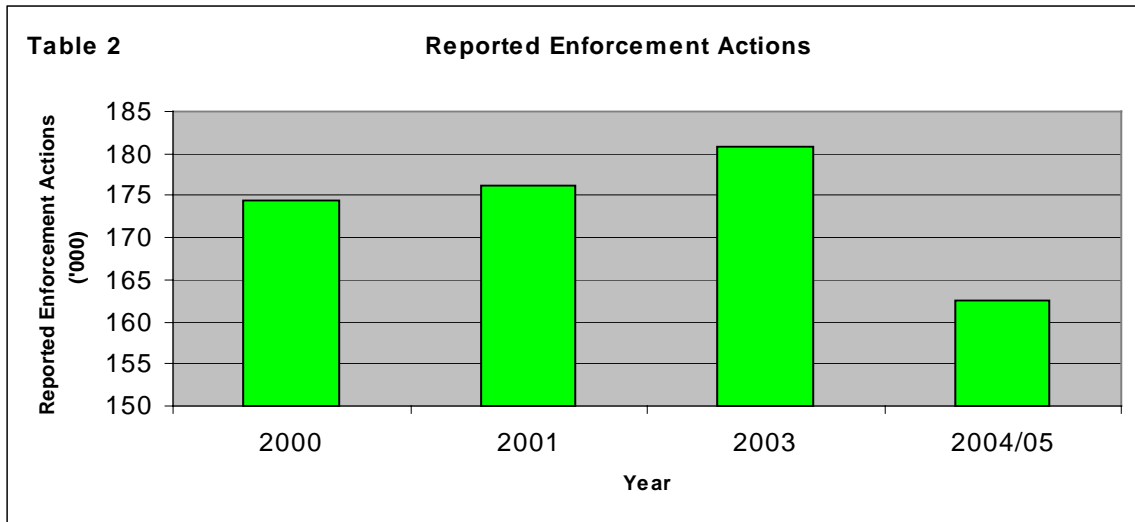
14. Annex 3 provides an annual comparison of national trends for inspection of food businesses and enforcement activities from 2000 to 2004/2005. It gives total figures for the whole of the UK which are used to develop national policy and to report to the European Commission.

15. The figures show a general decrease between 2003 and 2004/2005 for:

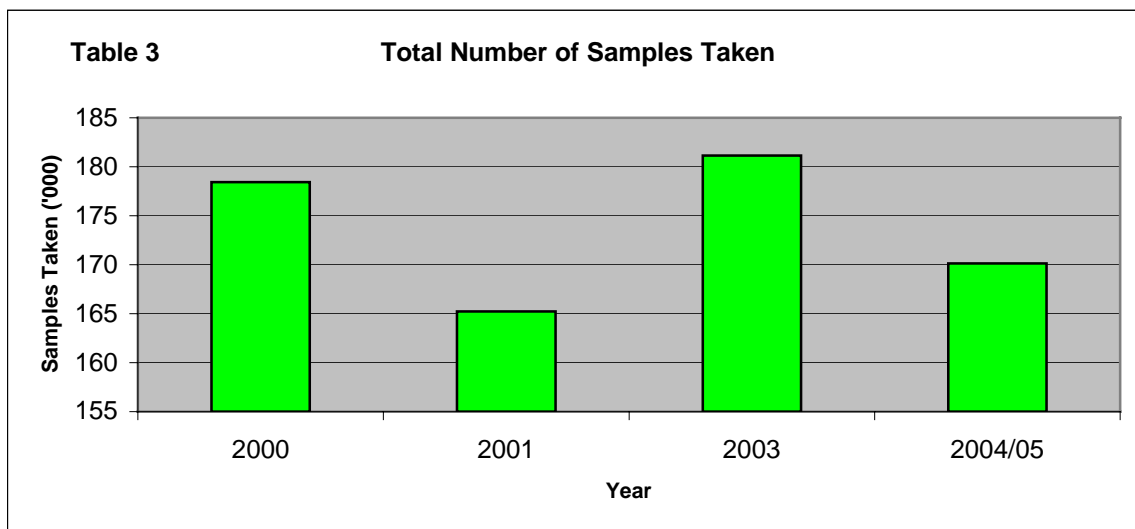
- the numbers of inspections and other visits, by 5% (Table 1): (“inspections and other visits” covers full or partial inspections, revisits, advisory visits and purely sampling visits)

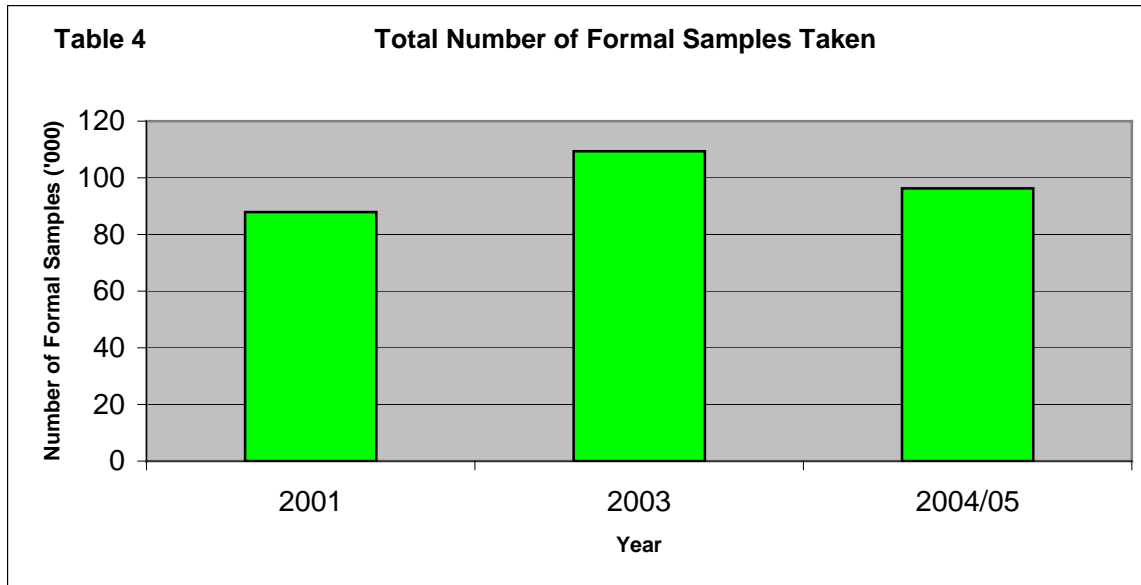


- the number of enforcement actions taken, by 10% (Table 2), and



- the total number of samples taken, by 6%, and the number of formal samples by 12% (Tables 3 and 4).





Due to a change in the categorisation of samples taken for microbiological examination in 2001, no direct comparison can be made between 2000 and 2001 formal sampling data

16. Possible reasons for these changes are:

- inspection is not the only action which LAs take to secure compliance with the law. LAs are also encouraged to pursue advisory and educational work with local businesses. These changes may reflect moves by some LAs to improve compliance through support and advice, or through better focussed sampling programmes, rather than through inspection and formal enforcement action (which would have anticipated some of the principles subsequently proposed in the Hampton Report); and
- in 2004/2005 LAs were required to adopt “alternative enforcement strategies” for the lowest risk premises (risk categories E and F for hygiene, and risk category C for standards). This policy allows LAs not to inspect low risk premises should they determine that to be appropriate having regard to the management of the business and the nature of the business. This enabled greater emphasis to be given to higher risk businesses, and ensured that “unnecessary” inspections were discouraged.

Further exploration of the reasons for these changes will be pursued in discussions with LACORS, and during future audits of individual LAs.

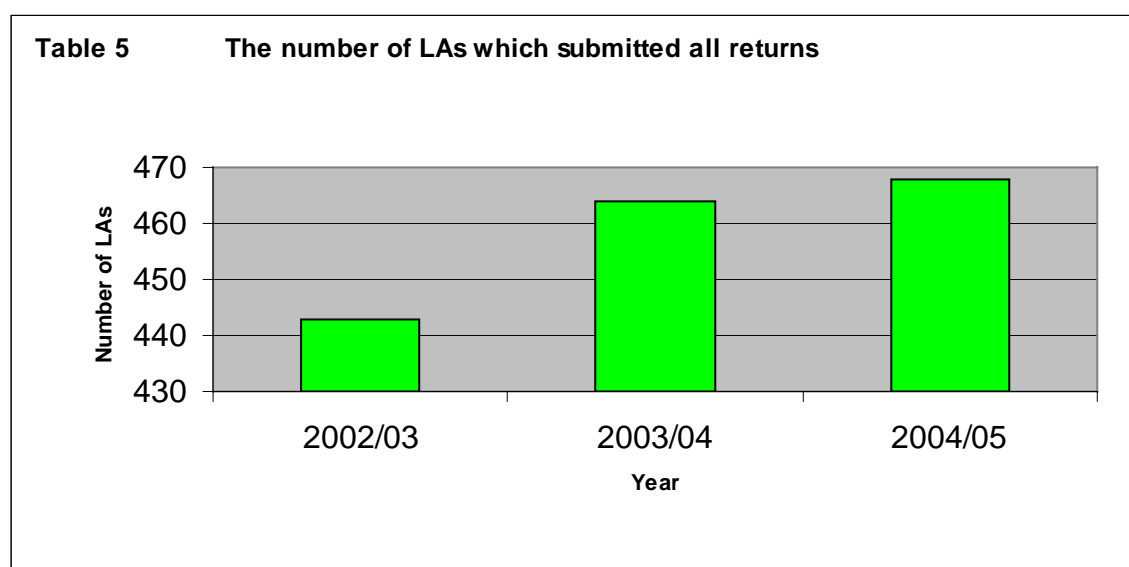
## Individual LA Data

17. Annex 4 provides individual LA data listed alphabetically and by type of LA, for 2003/2004. Annex 5 provides individual LA data for the period 2004/2005. For 2003/2004, some of the data are for the calendar year, due to EU custom and practice (samples and enforcement actions), and some is for the financial year, in line with LA financial planning (for inspections achieved against those planned). As is noted in Annex 1, point 3, it was decided to collect all data on a financial year basis from 2004/2005 onwards.

18. Annex 6 provides explanatory notes for the tables in Annexes 4 and 5.

19. The returns for 2004/2005 show several welcome positive points, reflecting the hard work which many LAs have put into improving their returns:

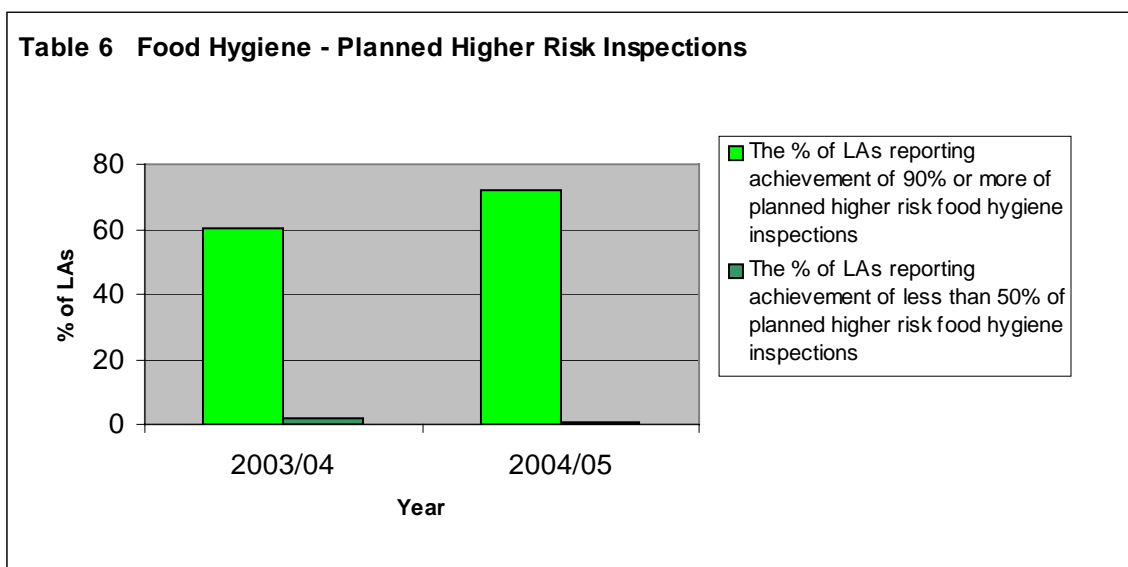
- For the first time, all 468 local authorities submitted their returns (Table 5).



- 433 LAs are responsible for enforcing food hygiene. The number of LAs which reported achieving all of their planned inspections of higher risk<sup>1</sup> food hygiene premises has increased from 112 (26%) in 2003/2004 to 161 (37%) in 2004/2005. For 2004/2005, these LAs are listed in Annex 7;

<sup>1</sup> For food hygiene, “higher risk” means premises in risk categories A and B (out of six categories).

- the number of LAs reporting achievement of 90% or more of planned higher risk food hygiene inspections rose from 260 (60%) in 2003/2004 to 310 (72%) in 2004/2005 (Table 6);
- the number of LAs reporting achievement of less than 50% of planned higher risk food hygiene inspections fell slightly from 7 (1.6%) in 2003/2004 to 3 (0.7%) in 2004/2005 (Table 6);



- 225 LAs are responsible for enforcing food standards. However, 74 of these LAs reported having no high risk premises. Therefore the following percentages, for achievement of planned inspections of high risk premises, are based on the remaining 151 LAs;
- the number of LAs which reported achieving all of their planned inspections of high risk<sup>2</sup> food standards premises has increased from 54 (35%) in 2003/2004 to 79 (52%) in 2004/2005. For 2004/2005, these LAs are listed in Annex 7;
- the number of LAs reporting achievement of 90% or more of planned inspections of high risk food standards premises rose from 89 (59%) in 2003/2004 to 106 (70%) in 2004/2005 (Table 7);

<sup>2</sup> For food standards, "high risk" means premises in risk category "high", now risk category "A" (out of three categories).

- the number of LAs reporting achievement of less than 50% of planned high risk food standards inspections fell from 19 (12%) in 2003/2004 to 5 (3%) in 2004/2005 (Table 7).



- all LAs reported carrying out food sampling.

20. However, a small minority of LAs continue to have difficulties. Areas where the 2004/2005 figures show that further improvement is needed included:

- 3 LAs for food hygiene, and 5 LAs for food standards, provided figures which indicated unusually low levels (below 50%) of achievement of their planned higher risk inspections for 2004/2005. These LAs are listed in Annex 8 A and B. It should be noted that these LAs are not necessarily performing poorly. This position may be due to low levels of actual activity, or it may be due to inadequate record keeping. In several cases these are LAs which did not report “in year” changes to their plans. These are adjustments made during the year to allow for premises which were found to be closed when the inspection fell due, or where a downrating of a premises from hygiene risk category A meant that the planned second inspection that year was no longer required;
- 5 LAs reported gaps in their figures for inspections, due to local IT problems, which are being addressed, or have now been resolved. The Agency has been kept informed by these LAs of the local action being taken, and advice is being offered where appropriate. These LAs are listed in Annex 8C; and

- 5 LAs reported no high risk inspections achieved for food standards despite including figures in their plans. A sixth had no plan but reported achievement. These LA are also listed in Annex 8C.

21. It must be stressed that the listing of an authority in Annex 8 does not necessarily mean that its level of service should be considered poor. In some cases, incorrect figures were submitted due to local IT problems or loss of key staff, which did not fully reflect the actual work which the LA's staff had achieved. Several of these LAs have now indicated they have resolved these problems.

22. An assessment of each of the LAs with low reported figures, listed in Annex 8 A and B, and of the LAs with gaps in their figures, listed in Annex 8C, will be undertaken, on an individual basis, to confirm the facts and to consider what action might be taken by the Agency. The range of possible actions, which start with advice and support, is given in Annex 10. To make such assessments on an open, consistent and transparent basis, it is proposed to review and expand the current guidance of the use of statutory-based powers of direction or default, to include non-statutory based actions. Key stakeholders, including the LAs themselves, are being consulted on this.

### ***Review of the Monitoring System***

23. The overall review of the monitoring system was launched in early 2004 and was the central part of the action being taken to help LAs improve the quality of their returns still further. It covers both the content of the data to be collected, and the means of transmission. The review seeks to learn lessons from experiences of the initial system introduced in 2001. Its aims are to:

- improve the reliability of the returns;
- simplify the system;
- introduce a system of direct data transfer from LAs to the Agency; and
- develop an overall "matrix" for assessing individual LA's levels of service delivery, modelled on the Comprehensive Performance Assessment system of the Audit Commission.

24. The review forms part of the Agency's Strategic Plan for 2005/2010, with a target date for completion of 2006. It is being carried out in full co-operation with stakeholders through the Performance Strategy Group and the Monitoring System User Group.

25. The emerging ideas for the matrix look beyond measures of activities, such as inspections completed and samples taken, to focus on outcomes and on an assessment of advisory and educational work. This will link into co-operative work between LAs and businesses to promote safe food production via such systems as "Safer Food Better Business". A first consultation of all LAs on emerging ideas was held from March to May 2005.

26. The further progress of the monitoring system review will take account of:

- the proposals in the Hampton Report on the future of government regulation, now to be taken forward by Local Better Regulation Office (LBRO).
- the Agency's proposals on priorities for regulation;
- the proposed Compliance Code;
- proposed changes to the current Enforcement Code of Practice, in line with Hampton ideas;
- the information on levels of compliance from the food premises survey; and
- the future information details required by the European Commission for National Control Plans under the new Official Food and Feed Regulation.

### ***Risks and Possible Impact***

27. The potential risk to the Agency arising from these issues are:

- that FSA monitoring of LAs may not be in line with future government policy of regulation, following the Hampton Report;
- that the Agency may be challenged over what is being done to address weaknesses in the quality of some LA data; and

- that the Agency may be challenged over what is being done to help some LAs to raise the level of key activities.

28. The actions being taken to mitigate these three potential risk are:

- the review of the monitoring system in harmony with Hampton and the future of government policy on regulation;
- the Agency is continuing to work with LAs to help them to improve the quality of their data: details of the actions being taken are given in Annex 1; and
- where appropriate, action will be taken with individual LAs, as decided on a case by case basis. Details of the range of possible actions are given in Annex 10, on which key stakeholders are being consulted.

### **Board Action Required**

29. The Board is invited to:

- **note** the improvements in the level of LA returns, and in the reliability of the data;
- **discuss** the information on national trends;
- **note** the information for individual local authorities;
- **agree** that officials should consider what further support or action should be taken with those LAs which reported the lowest levels of key activities for 2004/2005, or had gaps in their data, on the basis of the current intervention policy, subject to any comments from key stakeholders;
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