

GENERAL PURPOSES AND LICENSING COMMITTEE – 11 JUNE 2010

PROPOSED EXTENSION OF JOINT WARRANTING BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND NEW FOREST DISTRICT COUNCIL TO INCLUDE WARRANTING OF INSPECTORS FROM OTHER HAMPSHIRE AUTHORITIES

1. INTRODUCTION

- 1.1 This report seeks authority for NFDC to participate in the Hampshire Flexible Warranting Scheme. Partnership working is a key area of improvement identified by the HSE and this scheme is seen as a means of making best use of joint resources and to maximise their impact on local, regional and national priorities.

2. BACKGROUND

- 2.1 The Health and Safety Executive Board have identified the mutual benefits to be gained by Local Authorities (LAs) and the Health and Safety Executive (HSE) working jointly and in partnership locally, regionally and nationally where it makes sense, in terms of resources and impact. A barrier to this is the inability of HSE and LA inspectors to take action in each others area of responsibility, or for LAs to work across each other's administrative boundaries.
- 2.2 Flexible Warrant Schemes (FWS), with LAs and HSE appointing a number of each others inspectors under s19 of the Health and Safety at Work etc. Act 1974 (HSWA), have the ability to overcome this legal barrier. Inspectors appointed to a FWS have the ability to enforce legislation for the authority which has enforcement responsibility for a particular business.
- 2.3 NFDC has participated in the original joint warranting scheme which has successfully operated with the HSE and since June 2005.

3. OBJECTIVE

- 3.1 The objective of the scheme is to increase the flexibility and responsiveness of health and safety regulators to situations of significant risk, to increase communication between health and safety regulators and to facilitate the collective use of resources.

4. MANAGEMENT OF THE SCHEME

- 4.1 The scheme will be managed by a Management Team formed of representatives for the HSE and the County Health and Safety Liaison Group. The management team are responsible for agreeing any local arrangements for the operation of the FWS and bringing these arrangements to the attention of all participants and make any necessary amendment to the memorandum of understanding.

- 4.2 A memorandum of understanding has been produced which clearly addresses the training needs, competency arrangements, indemnity and health and safety of inspectors. It also specifies the circumstances in which it will be used.
- 4.3 The Terms of Reference for the Management Team are to keep under review the operation of the FWS under this MoU, and in particular to:
- a. monitor the operation of the scheme;
 - b. consider and, where appropriate, agree to alterations to the scheme e.g. proactive or programme work;
 - c. resolve problems arising from the practical application of the statutory provisions and responsibilities;
 - d. refer issues of conflict that cannot be resolved by the MT to the Head of the Local Authority Unit who will maintain a strategic overview and arbitrate in these instances;
 - e. make recommendations to the HSE's Local Authority Unit about improvements to the operation of FWS nationally; and
 - f. meet as necessary to review the operation of the FWS within the scope of this MoU but must meet at least annually.

4.4 The Flexible Warranting scheme will only be used in the following circumstances:

LA issues outside the FWS	Cross boundary LA/LA and LA/HSE issues within the FWS	HSE/ORR issues outside the FWS
<p>a) HSE’s own activities will remain regulated by the relevant local authority</p> <p>b) Other Environmental Health regulatory activities</p>	<p>a) Accident and complaint investigations ONLY when enforcement is unclear, or when both parties are in agreement.</p> <p>b) Matters of Evident Concern – witnessed during other activities in area or while at premises.</p> <p>c) Activities outside premises - where a visit to an LA enforced premises identifies risks or interventions in relation to an activity that takes place outside the boundary of those premises including peripatetic workers.</p> <p>d) Technical Support – where an inspector requires technical support that is available within another enforcing authority and it is not proposed to arrange a joint visit with the Inspector.</p> <p>e) Proactive or Programme work – by agreement.</p> <p>f) Any other circumstances - by agreement.</p>	<p>a) Crown premises including MOD</p> <p>b) Fire, Police, Ambulance and other Public Services</p> <p>c) NHS Trust premises enforced by HSE</p> <p>d) LA’s own activities</p> <p>e) Hazardous & nuclear installations</p> <p>f) Railways</p> <p>g) Construction sites (other than agreed projects, agreed construction activities or matters of evident concern)</p> <p>h) Dock activities</p> <p>i) Pesticide issues enforced by HSE</p> <p>j) Fairgrounds (other than agreed fairground activities or matters of evident concern)</p> <p>k) Employers' Liability Compulsory Insurance</p>

5. ADMINISTRATIVE ARRANGEMENTS

- 5.1 The competency of nominated inspectors will be reviewed regularly by their employing authority and the Management Board will consider this annually. Only inspectors holding a full authorisation from their employing authority and with two years post qualification experience are eligible for the scheme.
- 5.2 Involvement in the FWS is entirely voluntary. There is no obligation on any enforcing authority to act on behalf of, or at the behest of, another enforcing authority. Participation in the scheme may be terminated by any individual participating enforcement authority by giving three months notice in writing to the other party/parties.

6. RESOURCE COMMITMENTS

- 6.1 The reactive interventions covered by the scheme relate to an inspector making a timely, local, national or technical intervention in an effort to increase the flexibility and responsiveness of the regulatory system. This approach is not intended to result in significant diversion of resources from existing activities. These interventions are expected to be few in number and indeed this has been the experience with the existing joint warrant arrangement with the HSE. Proactive work which involves the use of Flexible Warrants should follow the usual annual process for planning areas of joint working. Assessment of employers' arrangements to control the risk of asbestos is the proposed project for 2010. Details of this project are contained in Appendix 2.
- 6.2 The development and implementation of the scheme will require commitment from Chief Officers and Managers in the completion and return of the competency and authorisation forms. The Hampshire Environmental Health Managers Group agreed for the FWS to be taken forward and be started this year.
- 6.3 Nominated key officers will attend an introductory training course followed by refresher training where necessary.

7. FINANCIAL IMPLICATIONS

- 7.1 All planned interventions are considered in the intervention plan drawn up each year. Reactive interventions are always expected to be few in number and are considered as part of enforcement in the intervention plan. Therefore there are no financial implications as a result of this report.

8. ENVIRONMENTAL IMPLICATIONS

- 8.1 There are no environmental implications as a result of this report.

9. CRIME & DISORDER IMPLICATIONS

9.1 There are no crime & disorder implications as a result of this report

10. EQUALITY AND DIVERSITY IMPLICATIONS

10.1 There are no equality and diversity implications.

11. RECOMMENDATIONS

11.1 Amend the existing scheme of delegation under the Health and Safety at Work etc Act 1974 and replace with the delegation set out in section 2.1 of Appendix 1 of this report which includes powers for HSE and Local Authority inspectors identified in the Hampshire Flexible Warrant Scheme.

11.2 That the powers set out in section 2.2 of Appendix 1 of this report be added to the Council's scheme of delegation to allow for NFDC inspectors to work for the HSE and other Hampshire Local Authorities as an appointed inspector under the Health and Safety at Work Etc Act 1974 within the terms of the memorandum of understanding of the Hampshire Flexible Warrant Scheme.

11.3 That the powers set out in section 2.3 of Appendix 1 of this report be added to the Council's scheme of delegation to allow for enforcement in specific businesses to be transferred between the Health and Safety Executive and NFDC where there is agreement.

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Background Papers:

None

Appendix1

DELEGATION OF AUTHORITY OF HEALTH AND SAFETY LEGISLATION

1. INTRODUCTION

- 1.1 A review of delegated authorisations of Health and Safety legislation has identified the need to confirm and amend delegated powers. This report identifies the level of powers that are recommended to be delegated to officers in respect of the specified legislation.

2. REQUEST FOR DELEGATION OF POWERS

- 2.1 Amend the existing scheme of delegation under the Health and Safety at Work Etc Act 1974 and replace with the following

Source	Power Delegated	Delegated To
Health and Safety at Work etc Act 1974	(1).Appointment under Section 19 for the purpose of the Act and to exercise powers of an inspector specified in Sections 20,21,22,25 and 39; and any health and safety regulations; and the provisions of the Acts mentioned in schedule 1 to the Act which are specified in the third column of that schedule and of the Regulations, Orders or other instruments of a legislative character made or having effect under any provision so specified, as enforced from time to time. (2) To institute proceedings in England and Wales pursuant to Section 38 of the 1974 Act; but not to the extent that these functions are discharged in the Council's capacity as an employer.	Environmental Health Manager (Commercial), or Senior Environmental Health Officers, or Environmental Health Officers or Jenny Broom. HSE and Local Authority inspectors identified in the Hampshire Flexible Warrant Scheme
Health and Safety at Work etc Act 1974	Appointment under Section 19 for the purpose of the Act and to exercise powers of an inspector specified in Sections 20, 21; and any health and safety regulations; and the provisions of the Acts mentioned in schedule 1 to the Act which are specified in the third column of that schedule and of the Regulations, Orders or other instruments of a legislative character made or having effect under any provision so specified, as enforced from time to time; but not to the extent that these functions are discharged in the Council's capacity as an employer.	Environmental Health Technicians

2.2 The following scheme of delegation will allow for NFDC to be part of the Hampshire Flexible Warrant scheme.

Source	Power Delegated	Delegated To
Health and Safety at Work Etc Act 1974	To appoint suitably authorised and competent NFDC inspectors to the Hampshire Flexible Warrant scheme	Head of Public Health and Community Safety.
Health and Safety at Work Etc Act 1974	To work as an appointed inspector under the Act for the HSE and other Hampshire Local Authorities within the terms of the memorandum of understanding for the Hampshire Flexible Warrant scheme	Environmental Health Manager (Commercial), or Senior Environmental Health Officers, or Environmental Health Officers identified in the Hampshire Flexible Warrant Scheme

2.3 In order to ensure the delegation of powers are complete the following delegation will allow for enforcement in specific businesses to be transferred where there is agreement between the Health and Safety Executive and NFDC.

Source	Power Delegated	Delegated To
The Health and Safety (Enforcing Authority) Regulations 1989	Power to agree to the responsibility for enforcing any of the relevant statutory health and safety provisions in respect of any particular premises, or any activity, may be transferred from the Health and Safety Executive to NFDC or from NFDC to the Health and Safety Executive.	Head of Public Health and Community Safety or Environmental Health Manager (Commercial).

Appendix 2

Asbestos Duty to Manage project 2010

Scope

To allow inspection by LA Inspectors and HSE Inspectors at any premises as part of the Asbestos Duty to Manage Project, from 1st April 2010 to 1st January 2011. Local Authorities may buddy up to increase impact in designated areas of their districts.

Objective

To improve the awareness of duty holders, of the duty to manage asbestos in commercial premises, and to increase compliance across Hampshire and IOW.

Method

As one of the Disease Reduction Programmes, and National Strategy priorities, the project will identify the present Duty to Manage Asbestos awareness in Hampshire, including Employers/Landlords responsibilities. Nationally surveys have shown low levels of compliance with the Asbestos Regulations, while asbestos related diseases' following exposure continues to be the biggest occupational killer in Great Britain.

Co-coordinating work with HSE and Hampshire Environmental Health Departments using flexible warrants is an integral part of the project. Use of flexible warrants will allow us to maximise exposure, publicity and impact.

A training day will be held in 2010 to provide further information on how the campaign is to be delivered. A briefing pack including guidance notices and template letters will also be provided to LA's.

From mid April 2010 each local authority will use flexibly warranted inspectors to visit premises provided via local targeting, with the focus of the project in October 2010. Each inspector should attempt to visit the premises on their list and use the pre-prepared questionnaire to help target the inspection along campaign lines. At the end, an evaluation will be completed to help give an overall picture of the campaign.

To keep the best control possible of the campaign HSE/ each LA will have a main contact point/ gate keeper. Central Office of Information to be involved as necessary.