

NORTH LINCOLNSHIRE COUNCIL

**CABINET MEMBER FOR HIGHWAYS AND
NEIGHBOURHOODS**

**HSE AND LOCAL AUTHORITY FLEXIBLE WARRANT SCHEME
MEMORANDUM OF UNDERSTANDING**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 Officers in the Food and Safety Team have been authorised since 2005 to carry out health and safety regulatory work in partnership with the Health and Safety Executive (HSE) under the terms of the Flexible Warrant Scheme. This scheme is now being extended to include all local authorities in the South Yorkshire and Humber region.
- 1.2 This report seeks the authorisation of the Director of Neighbourhood and Environmental Services to sign appendix 6 of the Health and Safety Executive and Local Authority Flexible Warrant Scheme Memorandum of Understanding in order to enable the Council's continuing participation within the scheme.

2. BACKGROUND INFORMATION

- 2.1 In October 2005 North Lincolnshire Council signed up to the Flexible Warrant Scheme Memorandum of Understanding (MOU) with the Health and Safety Executive. This scheme encompassed all local authorities within the former Humberside area including Hull City Council, North East Lincolnshire Council and East Riding of Yorkshire Council. The MOU was later refreshed on two separate occasions the most recent being April 2008 which extended its period until 1 April 2012.
- 2.2 This memorandum is now to be replaced with a redrafted version, which now covers all local authorities in the South Yorkshire and Humberside region. The purpose of the report is to update the Cabinet Member on the purpose of this memorandum and request that the Director of Neighbourhood and Environmental Services be authorised to sign the memorandum.
- 2.3 In the event that approval is not given the current memorandum will expire on 1 April 2012 and officers will no longer be able to intervene as regards matters of evident concern in premises which fall under the enforcement responsibility of the Health and Safety Executive.

- 2.4 The Health and Safety (Enforcing Authority) Regulations allocate the enforcement of health and safety legislation between Health & Safety Executive (HSE) and local authorities (LA) on the basis of the main activity at a premises. This administrative allocation of premises through regulations is designed to prevent dual-regulation of companies at a site by different enforcing authorities. Historically this allocation has delivered a good split of work, enabling (with some exceptions) a sensible division of service based sectors and industrial premises with each enforcing authority maintaining the necessary skills and resources to target their respective sectors.
- 2.5 With a changing employment profile away from manufacturing (and with it a change in the risk profile of businesses), HSE and LAs are now tackling similar risk issues. There are an increasing number of multi-site companies that are targeted by both HSE and LAs as a result of delivery of national priorities and supply chain work is one such example where a new approach is necessary.
- 2.6 The current regulations tend to encourage working separately, however the HSE and Local Authorities are moving in the direction of greater partnership working. Revising the Enforcing Authority Regulations is one option for providing a more appropriate allocation of work activities between enforcing authorities, but such an approach retains a model about division of resources rather than the aim of pooling resources, strengths and expertise to deliver more through partnership.
- 2.7 The flexible warranting of inspectors provides a more adaptable mechanism for the allocation of responsibilities. Flexible warranting enables one enforcing authority to appoint inspectors from another authority to undertake work on its behalf. The scheme currently in operation sets out authorisation arrangements in a Memorandum of Understanding (MOU) between the enforcing authorities, including the nature of work covered by the warranting. A copy is attached to this report.
- 2.8 Flexible warranting provides a practical approach designed to make the best use of joint resources by removing the current barriers that restrict where an authority or individual inspector can apply health and safety legislation. The Flexible Warranting agreement covers the management arrangements, including for example indemnification of inspectors, communication between authorities, competence requirements and dispute resolution, and provides a supporting framework to facilitate and support inspectors working on behalf of the other authority.
- 2.9 The aim of flexible warranting is not to offload work from one authority to another. It is about facilitating the collective use of resources to increase the effectiveness of the regulatory system. It provides a truly flexible approach that allows local deviation from the national structure dependent on available resources, risk profile and economic activity within a locality. It is about supporting a county or regional approach that makes the best

use of the skills and strengths of both local and national regulators.

- 2.10 The MOU is the mechanism for formalising the flexible warranting scheme. Arrangements are freely entered into by two or more authorities. It is used to formalise new or existing working arrangements when it is not necessary or desirable to provide legal authority for the acts of, or create legal obligations to, such authorities.
- 2.11 The MOU is particularly useful to set out demarcation arrangements between two or more enforcing authorities where their responsibility for enforcing health and safety legislation overlaps, or where there are areas of uncertainty.
- 2.12 In the case of flexible warrants, the signing of a MOU is preferable to the complex route of seeking legislative change. It allows the appointment of inspectors from other enforcing authorities to be made, whilst limiting the extent to which they may execute the powers conferred upon them by their warrants. This route also brings the advantage of flexibility, whereby the Memorandum of Understanding may be altered or if necessary terminated as the arrangement progresses.
- 2.13 The MOU is supported by an Inspector's Manual (currently version 3), providing further details of the arrangements between the enforcing authorities, and practical tools to assist with the operation of the flexible warrants system.
- 2.14 The proposed Memorandum of Understanding details the extent to which flexible warrant holders intervene on behalf of another enforcing authority and allows the participating organisations to operate the scheme in the following manner:
- HSE Inspectors warranted by Local Authorities; Local Authority Inspectors warranted by HSE (as in existing scheme)
 - Local Authority Inspectors being warranted by other Local Authorities (new expansion of existing scheme)

The scope of interventions allowable under the flexible warrant scheme is:

- Reactive work - intervening when witnessing risks - a flexibly warranted inspector is able to respond to matters of evidence concern witnessed during the course of their work irrespective of the actual enforcing authority
- Complaints - where an enforcing authority receives a complaint and enforcement responsibility is unclear, flexible warrants enable an initial investigation to start promptly.
- Accidents - where an authority receives an accident report and the enforcement responsibility is unclear, the investigation can commence in a more timely manner, and allocation made on the basis of the findings of the visit.
- Dealing with anomalies within the Enforcing Authority Regulations - the

enforcing authority regulations include a number of anomalies that in practice do not make sense in terms of delivering front line work. This allows LAs to enforce activities associated with premises in which they enforce but which take place outside the boundary of those premises and therefore currently have to be enforced by the HSE e.g. deliveries to retail premises, peripatetic tattooists.

- Support to partner organisations is more easily arranged, in particular HSE specialist support can operate on behalf of LAs without the need for joint visiting e.g. diving expertise.
- On agreement proactive work - the joined up approach means project working can be supported in a way that allows individuals and teams to develop expertise and apply those skills across a wider field of responsibility. Project teams are able to plan the use of joint resources where enforcement boundaries constantly change e.g. the responsibility for enforcing the transport of white goods currently passes between the enforcing authorities many times as the goods travel from factory to consumer. Flexible warranting allows inspectors from either enforcing authority to inspect the whole transport chain.
- On agreement a virtual team approach with a range of partner regulators - flexible warranting provides a route to facilitate such an approach between HSE and LAs, and between LAs. When a serious accident happens the most suitable and available staff can be pulled together in a small team, making best use of those with the best experience for that particular event wherever possible. The multi-discipline approach is slick and effective, with evidence collected and the investigation completed quickly. But this is not a large team of staff, simply better management of the available limited resources and much more efficient than leaving one inspector struggling with a complex investigation.

2.15 Flexible warranting is designed to enable more to be delivered from the resources currently allocated to health and safety. The aim is to provide an adaptable framework that minimises the constraints of allocation that are inevitable with a set of regulations. Flexible warranting is not intended to replace the Enforcing Authority Regulations, the approach is about increasing impact and brings the following benefits:

- i) Local issues - local solution:** Local authorities are by design delivering a service for their local community. There is no single model, and no uniform risk profile. Flexible warranting enables local agreements to be made between regulators to facilitate more effective approaches to the local circumstances - e.g. LPG bulk installations which would classify as Control of Major Accident Hazards (COMAH) sites.
- ii) Breaking down 'artificial barriers':** HSE takes responsibility for work undertaken outside of fixed premises. This allocation means that work undertaken outside the gates of a site will fall to HSE. This makes no sense when all other aspects of the business are dealt with by the local authority.

- iii) **Better use of scarce resources:** Resources allocated to both HSE and LAs to deal with health and safety regulation inevitably means prioritisation and targeting of resources. Adaptable use of that scarce resource towards the highest priorities is possible by flexible warranting ensuring that the most serious issues are tackled.
- iv) **Timeliness of interventions and responsiveness:** Increases the flexibility and responsiveness of health and safety regulators to situations of significant risk. An inspector from any authority witnessing a significant risk can intervene there at the time to remedy the situation with the full support of the appropriate enforcing authority.
- v) **LA Officers utilising skills more often:** the current allocation of work to LAs can mean that LA officers are rarely involved in serious accident investigation. A fatal accident investigation may happen only once in a career for some officers and when it does this puts the officer under significant pressure at a time when high performance is essential. LA Officers can utilise investigation skills more often by working alongside HSE staff on serious investigations, and by taking a more proactive role in investigation in areas of initial doubt. Similarly Officers can more easily contribute to investigations for neighbouring authorities to deliver the same benefits and make better use of skills. This maintains staff development, increases confidence of staff, and keeps competence current.
- vi) **Shared service:** Local Authorities are being encouraged to adopt a shared service approach across a range of their services. With Flexible Warrants, Regulatory Services are able to pool resource across a county group delivering greater efficiency and impact. Expertise can be shared and individual or small teams can target companies with sites across the county to ensure consistency of approach. Allows either joint deployment or single inspections e.g. inspectors can either work together or separately in each other's premises or areas of responsibility as the need dictates.
- vii) **Delivering sensible health and safety regulation:** A joined up approach is more likely to deliver impact. Individual or groups of inspectors working together irrespective of actual enforcing authority can properly target supply chains in a joined up manner. The approach facilitates better communication between regulators, encourages improvements in confidence, consistency, competence and expertise e.g. through closer contact and by improving the skill level needed to deal with different areas of risk.

2.16 A management team consisting of representatives from all parties involved will manage the flexible warrant scheme and will be responsible for agreeing any local arrangements for the operation of the flexible warrant scheme and bringing these arrangements to the attention of all participants and appending them to the MOU.

- 2.17 The terms of reference for the management team are to keep under review the operation of the scheme under the 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 management team 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 the scheme nationally; and
 - f. meet as necessary to review the operation of the scheme within the scope of the MOU but must meet at least annually.
- 2.18 Constitutionally, for the authorisation of officers under the scheme is permitted by the delegated authority under the Councils Scheme of Delegation to appoint inspectors and officers under section 19 Health & Safety at Work etc Act 1974.
- 2.19 North Lincolnshire Council was part of the initial pilot flexible warrant scheme which came into being in October 2005. Since that time the Council has embraced the scheme contributing not only to its early evaluation by Northumberland University but its continuance through a continuing stream of enforcement interventions resulting in over 50 formal reactive interventions requiring referral to the HSE some of which have required the service of statutory notices and the provision of evidence resulting in prosecutions. The greater majority of these interventions have been in respect of construction issues predominately working at height.
- 2.20 Flexible Warranting is a practical demonstration of the increased culture of partnership - it fits in with the ethos "partnership is the way HSE and LAs do business together". It increases contact, communication, joint training, joint working and joint planning. It is about delivering greater outcomes from resources allocated to health and safety regulation in a way that makes the best use of the strengths of the national and local regulators.

3. OPTIONS FOR CONSIDERATION

- 3.1 Option 1 – to approve the authorisation of the Director of Neighbourhood and Environmental Services to sign the Memorandum of Understanding.

- 3.2 Option 2 – not to approve the authorisation of the Director of Neighbourhood and Environmental Services to sign the Memorandum of Understanding.

4. ANALYSIS OF OPTIONS

- 4.1 Option 1 - with the memorandum of understanding in place the Council will demonstrate its continued commitment to partnership working with the HSE and neighbouring local authorities and be better able to evidence compliance with its legal obligations to make arrangements for the enforcement of health and safety in North Lincolnshire as required by Section 18 of the Health and Safety at Work etc Act 1974.
- 4.2 Option 2 - without the memorandum of understanding in place the Council would have difficulty in evidencing compliance as an enforcing authority with Section 18 of the Health and Safety at Work etc Act in relation to resources and capacity.

5. RESOURCE IMPLICATIONS

- 5.1 Financial implications – There are no financial implications.
- 5.2 Staffing implications - Current experience of operating the scheme indicates that the demands generated by partnership working can be accommodated by existing resources.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 6.1 Statutory implications – Signing of the revised memorandum will not affect the statutory position of the Authority.
- 6.2 Environmental implications – There are no environmental implications.

7. OUTCOMES OF CONSULTATION

- 7.1 Appropriately qualified staff of the Food and Safety Team are already operating under the existing Flexible Warrant scheme and have not raised any objections to being included in the extended scheme.

8. RECOMMENDATIONS

- 8.1 That the terms of this report are approved and that the Director of Neighbourhood Services formally agrees to sign appendix 6 of the Health and Safety Executive and Local Authority Flexible Warrant Scheme Memorandum of Understanding in order to enable the Council's continuing participation within the scheme.

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Background Papers used in the preparation of this report : Nil

Humberside & South Yorkshire County Liaison Group

LA and HSE Flexible Warrant Scheme

Memorandum of Understanding

Date of Commencement

1/4/2011

Purpose of the Memorandum of Understanding

1. This Memorandum of Understanding (MoU) and its appendices establishes a framework for a Flexible Warranting Scheme (FWS) between the Health and Safety Executive (HSE) and the Local Authorities (LAs) listed below. Further information on the detailed operation of FWS can be found in the “LA and HSE Flexible Warrant Scheme Handbook”.
2. The purpose of the MoU and its appendices is to:-
 - a. allow LAs to appoint and indemnify suitably qualified HSE Inspectors to undertake work within the LAs field of responsibility; and/or
 - b. allow LAs to appoint and indemnify suitably qualified LA Inspectors from other LAs, to undertake work within the LAs field of responsibility; and/or
 - c. allow HSE to appoint and indemnify suitably qualified LA inspectors to undertake work within the HSE’s field of responsibility;
 - d. set out the general circumstances for which flexible warrants may be used; and
 - e. set out, via the appendices, the specific detail of particular projects, programme work or any other agreed circumstances for which flexible warrants may be used.

Operational Management of the FWS

3. A Management Team (MT) consisting of sufficient representation of all parties involved will manage the FWS and will be responsible for agreeing any local arrangements for the operation of the FWS and bringing these arrangements to the attention of all participants and appending them to this MoU.
4. The Terms of Reference for the MT 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.

Scope of FWS

5. The FWS can be used in the following circumstances:

Column 1 LA issues outside the FWS	Column 2 LA/HSE issues within the FWS	Column 3 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) Complaints/Accidents – where the enforcing authority is unclear.</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 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) ELCl</p>

6. 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.
7. Signatories will ensure that only competent inspectors are nominated to participate in this FWS and will ensure that their inspector's competence is reviewed at least annually and is maintained.
8. Signatories will ensure that their participating inspectors do not engage in any activity that brings a conflict of interest to the FWS.
9. Signatories will ensure that their participating inspectors utilise their flexible warrants only within the scope of this MoU and associated appendices.
10. Section 26 of the Health and Safety at Work etc Act 1974 allows Enforcing Authorities to indemnify inspectors appointed under that Act under specified circumstances. It is the policy of the enforcing authorities signing this MoU to indemnify Inspectors appointed under that Act against the whole of any damages and costs or expenses which may be involved, if the enforcing authority is satisfied that the Inspector honestly believed that the act complained of was within his/her powers and that his/her duty as an Inspector required or entitled him/her to do it, and provided the Inspector was not willfully acting against instructions. This extends to the acts of Inspectors working within the scope of this MoU and the EAs signing this MoU below indemnify appointed Inspectors accordingly.

Commencement, termination and participation

11. The FWS will commence from the date that this MoU is issued (see title page) with specific projects etc. being time bound and/or restricted in accordance with the details contained within the relevant appendix.
12. Participation in the scheme may be terminated by any individual participating EA by giving three months notice in writing to the other party/parties.
13. Where an individual EA's participation in the scheme is terminated or when an individual inspector's circumstances change (e.g. they resign or retire) flexible warrants should be returned to the Local Authority Unit as soon as is practicable and no later than 15 working days following the termination or change in circumstance.

14. This MoU is between the following Health & Safety Enforcing Authorities:

Enforcing Authority	Name	Position	Signature
Barnsley Metropolitan Council			
Doncaster Metropolitan Council			
East Riding of Yorkshire Council			
Hull City Council			
North East Lincolnshire Council			
Rotherham Metropolitan Council			
North Lincolnshire Council			
Sheffield City Council			
HEALTH AND SAFETY EXECUTIVE	Geoffrey Podger	Chief Executive	

Appendix 1

Appendix to the Humberside and South Yorkshire County Liaison Group Flexible Warrant Scheme Memorandum of Understanding

Scope 1 of Warrant

1. To enable LA and HSE inspectors to undertake proactive inspection of cosmetic services including tattooing and semi permanent skin colouring in domestic premises (where work activity is also carried out there)
2. To enable LA and HSE inspectors to respond to matters of evident concern relating to the activity of cosmetic services including tattooing and semi permanent skin colouring in domestic premises
3. To enable LA and HSE inspectors to respond to accidents and complaints relating to the activity of cosmetic services including tattooing and semi permanent skin colouring in domestic premises
4. To carry out the above within the Scope of the Memorandum of Understanding

Scope 2 of Warrant

1. To enable LA and HSE inspectors to undertake proactive inspection of the erection and dismantling of temporary stages, grandstands and other temporary platform arrangements used by the entertainment industry in places of public entertainment
2. To enable LA and HSE inspectors to respond to matters of evident concern in relation to the work activity outlined in paragraph 1
3. To enable LA and HSE inspectors to investigate any accident and complaints relating to the work activity outlined in paragraph 1
4. To carry out the above within the Scope of the Memorandum of Understanding

Scope 3 of Warrant

1. To enable LA and HSE inspectors to undertake proactive inspection of delivery operations to premises where the main activity carried on within those premises is LA enforced. This also applies where part of the activity and associated peripatetic work is carried on outside the boundary of that LA enforced premises but within the geographical area of the Scheme
2. To enable LA and HSE inspectors to respond to matters of evident concern in relation to the activity outlined in paragraph 1
3. To enable LA and HSE inspectors to respond to accidents and complaints relating to the activity outlined in paragraph 1
4. To carry out the above within the Scope of the Memorandum of Understanding