



## CABINET REPORT

<b>Report Title</b>	<b>Flexible warranting for health and safety enforcement</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	20 January 2010
<b>Key Decision:</b>	NO
<b>Listed on Forward Plan:</b>	YES
<b>Within Policy:</b>	NO
<b>Policy Document:</b>	NO
<b>Directorate:</b>	Environment and Culture
<b>Accountable Cabinet Member:</b>	Cllr Trini Crake
<b>Ward(s)</b>	N/A

### 1. Purpose

- 1.1 This report seeks consent to enter into a flexible warranting arrangement with the Health and Safety Executive and all other local authorities in Northamptonshire for health and safety enforcement within predetermined limits of the flexible warranting arrangements below or for the use in urgent or critical circumstances.
- 1.2 A flexible warranting arrangement allows Local Authorities and the Health and Safety Executive to authorise suitably qualified officers of each others organisations to work on their behalf.

## **2. Recommendations**

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It is recommended that:

- 2.1 Cabinet support the principle of entering into a flexible warranting arrangement with the Health and Safety Executive and other Northamptonshire LA's and adopt the Memorandum of Understanding relating to the flexible warrant scheme;
- 2.2 That the Head of Public Protection be authorised to enter into the MOU on behalf of the Council; and delegated authority be granted to the Head of Public Protection to authorise relevant officers for the purposes of implementing the scheme.

## **3. Issues and Choices**

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### **3.1 Report Background**

- 3.1.1 Local authorities (LA's) and the Health and Safety Executive (HSE) have joint responsibility for health and safety enforcement in England and Wales. The Health and Safety (Enforcing Authority) Regulations 1998 set out which premises LA's and HSE are responsible for. In general terms HSE are responsible for manufacturing, construction sites and higher risk industries i.e. railways, mining, off shore gas/oil etc. LA's enforce the Act mainly in retail shops, catering premises, offices, leisure and cultural premises, warehouses and wholesalers which fall within their geographical area.
- 3.1.2 Each enforcement agency may only act in premises where they have enforcement responsibility, in accordance with the Enforcing Authority Regulations 1998. These regulations do not always provide a clear allocation of premises and sometimes create artificial barriers. This enforcement division also leads to occasional situations where LA officers cannot act upon matters of immediate concern, most commonly dangerous scaffolds or practices on construction sites.
- 3.1.3 LA and HSE resources are limited and should therefore be targeted where they will have the greatest impact. Enforcing authorities are challenged by the "Revitalising Health and Safety Strategy" issued by the Health and Safety Commission (HSC) to develop coherent working partnerships.
- 3.1.4 In June 2004 the HSC, HSE and the Local Government Association (LGA) signed up to a local statement of intent indicating a commitment to partnership working.
- 3.1.5 Pilot schemes for flexible warranting have been trialled in Hampshire, Suffolk and Bedfordshire and the Thames Gateway in Kent. In each of these schemes a detailed Memorandum of Understanding (MOU) has been developed to clearly set out the obligations and limitations of the flexible warranting arrangement and includes such matters as officer competencies and indemnities.

3.1.6 Feedback from these pilots has been very positive, for example officers in the Thames Gateway pilot report that flexible warranting has enabled officers to deal expediently with situations of imminent risk in premises previously outside their jurisdiction and deliver high quality and focused joint initiatives that have had a wide reaching impact on improving local businesses and benefiting their employees.

3.1.7 Having regard to the success of the pilots it is proposed that we enter into a flexible warranting agreement with the HSE and all other Northamptonshire authorities by local arrangement. Officers from Northamptonshire LA's and the HSE have already met together to give some consideration to flexible warranting and how it might work throughout the county and all are in favour of proceeding further.

3.1.8 It is envisaged that flexible warranting will be used as follows:

- for proactive educative and enforcement projects where a multi-agency team, comprised of inspectors from HSE and all signatory LA's can make high impact interventions by working together.
- for reactive work where an inspector is on site for another purpose, or passing by, and notices health and safety problems that require urgent attention in a premises where they would not currently be the enforcing authority;
- for reactive work where an inspector is needed onsite urgently to deal with an event such as a workplace fatality and an officer from the current enforcing authority (LA or HSE) is either not available or is so far away that the control of the situation and the start of the investigation will be compromised. In such an instance an officer from a partner agency may be asked to attend as a first response – but only if such an officer is available and suitably competent to deal with the request;
- to share the resource of inspectors with specialist skills as need arises; and
- for LA's to be able to immediately assist each other should emergency need arise and for business continuity purposes.

3.1.9 Other benefits of the proposed scheme are:

- improved communication and cooperation between health and safety regulators;
- increased flexibility and responsiveness of health and safety regulators to situations of significant risk;
- increased opportunities for shared officer training and development; and

- comprehensive testing of the use of flexible warrants as a means of overcoming issues created by the current allocation of enforcement responsibilities.

## **3.2 Issues**

- 3.2.1 The MOU is the mechanism for formalising a flexible warranting scheme. It will be used to formalise new or existing working arrangements between two or more parties. The MOU can be found in [Appendix 1].
- 3.2.2 A 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.
- 3.2.3 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 MOU may be altered or if necessary terminated as the arrangement progresses.
- 3.2.4 All staff involved in the flexible warranting project will continue to be employed by their existing employer.

## **3.3 Choices (Options)**

- 3.3.1 The cabinet could choose to reject this proposal, it is likely we would be the only one of the district Councils in the County to reject this partnership working proposal.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

No

### **4.2 Resources and Risk**

There are no resource or staffing implications with this report.

### **4.3 Legal**

The scheme has piloted in other parts of the country without any issues and all the district councils and the Health and Safety Executive wish to progress this issue.

### **4.4 Equality**

There are no equality or diversity issues in relation to this matter.

### **4.5 Consultees (Internal and External)**

Solicitor to the Council

#### **4.6 How the Proposals deliver Priority Outcomes**

The proposals help delivery the following key priorities in the Corporate Plan 2009-2010.

- Priority 1: Safer, greener and cleaner communities, effective health and safety enforcement makes Northampton a safer place to work and visit.
- Priority 2: Housing health and wellbeing, effective health and safety enforcement makes Northampton a healthier place to work.
- Priority 4: Partnership and community engagement, this is an example of effective partnership working with the other district councils in the County and the HSE.
- Priority 5: A well managed organisation that puts our customers at the heart of what we do, this partnership project helps us provide value for money services.

#### **4.7 Other Implications**

None

### **5. Background Papers**

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5.1 Memorandum of Understanding template produced by the HSE (appendix1)

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