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HELA

Flexible Warrants - update

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Cleared by Phil Scott on 8 October 2007

Issue

- 1) HELA agreed in October 2006 to set up a Task and Finish group to develop the Flexible Warrants proposal. This report outlines the progress to date and suggests a way of taking the issue forward.

Recommendation

- 2) HELA Members are invited to endorse and encourage the continued use of flexible warrants on the following basis:-
 - a) Allow existing pilots to continue with provided the participants agree;
 - b) Allow additional schemes, where there is a business need (for example to support specific projects). It seems likely that this will result in a total of about 20 schemes operating across GB by April 2008;
 - c) Where possible these schemes should be operated on a County basis, as this makes the administration of the schemes simpler.

Background

- 3) HSC's Strategy to 2010 and beyond suggested that there was no lasting logic to the current division of enforcement responsibility between HSE and LAs and that it didn't capture the full potential to work together.
- 4) Flexible Warrants (FW) issued under s19 Health and Safety at Work etc Act 1974 (HSWA) allow one Enforcing Authority (EA) to appoint another EA's suitably qualified inspectors to act within its field of responsibility. In other words HSE and LA inspectors can be appointed to exercise their powers in each other's premises or spheres of activity.
- 5) Flexible Warrants provide a practical tool for dealing with some allocation issues, but also help to make better use of joint resources (by removing barriers to action), to increase the speed of response to issues of significant risk (because of LA inspectors' local presence) and generally to

enhance partnership working (by recognising the equivalence of powers and skills between HSE and LA staff).

- 6) A number of pilot schemes involving the use of flexible warrants for enforcement officers have been developed to test their use. See earlier HELA Reports.
- 7) A Task and Finish group was set up with membership from LAU, Partnership Teams, HELA, LACoRS, FOD HQ, Construction, CIEH and LAs.
- 8) It has met 4 times since November 2007. It has not met recently as discussions with the Unions have progressed although LAU has continued to develop the scheme including the following.
 - a) An electronic system for producing Memorandum of Understanding and written instruments of appointment using e-mail, electronic signatures and digital photographs.
 - b) An Inspectors Hand Book containing:-
 - i) Instructions on setting up, managing and operating a flexible warrant scheme on a County basis.
 - ii) Standard documentation
 - (i) Letters
 - (ii) Notices
 - (iii) Mou
 - (iv) Written Instruments of appointment e-mails and examples
 - (v) Competency criteria and examples
 - (vi) Intervention criteria
 - c) Consulted with Chartered Institute of Environmental Health who offer their support in principle for flexible warrants.
 - d) Consulted with Royal Environmental Health Institute of Scotland. They support the use of flexible warrants and recognize their positive benefits. They also however reflected LA concerns about “one-way traffic” and resources but suggested that these may be reduced by ensuring investigations are passed to the appropriate authority after the initial response and reviewing resources and/or the prioritizing of enforcement activity.
 - e) Consulted with Prospect which continues to express serious concerns. These include reservations about the success of the pilots; the possibility of jeopardizing the legal process; the unnecessary escalation/involvement of HSE inspectors (as they see it); the justification on merits or cost and their potential use to contract out HSE work. However they can see a place for selective use for flexible warrants to facilitate specific work. Recent examples include work on

aerial and satellite installations, and peripatetic tattooists. But Prospect says they would prefer the use of Reg 5 transfers where possible.

- f) Consulted with Unison who consulted with their members within LAs. Their overall view was a feeling that at least in theory the proposal for flexible warranting could represent a positive step with it providing significant advantages and positive benefits with some respondents speaking positively of their involvement in the Flexible Warrant pilots. However they expressed concerns about the impact on LA resources and the funding to ensure competency and consistency and suggested a need to review the Enforcing Authority Regulations. We await any further comments from Unison regarding pay equivalence issues.
- g) Contacted the Secretaries of the LA County Liaison Groups. 36 of these have replied with 27 expressing a willingness to adopt a flexible warrant scheme and 12 of these wishing to adopt a scheme in 2007/08.
- h) Started a number of other pilot schemes including a HSE/LA/LA pilot in Suffolk, the warranting of LAs in North Wales to deal with Working at Height issues in the aerial and satellite installation industry and the use of flexible warrants to allow inspectors in Torbay to deal with peripatetic tattooists. Other specific pilots e.g. Moving Goods Safely initiative in Kent wish to progress.
- i) Drafted a HSE Board paper and consulted with FOD MB which was generally very supportive of the principal of flexible warranting. It agreed with the proposition that the availability of flexible warrants was presentationally powerful in supporting the partnership with LAs, particularly in planning jointly-staffed projects, and its withdrawal would have a similarly negative effect. It was also of benefit in driving LA to LA cross-warranting in order to facilitate the benefits of "shared service".
- j) Flexible warrants have the support of HSE's Senior Management. Their potential use has also been raised in relation to the BRE's review of the health and safety regulatory system and are relevant to any proposals to examine the enforcement boundary between HSE and LAs.

Argument

- 9) The process by which a scheme can be set up including the system for signing the Memoranda of Understanding, the written instruments of appointment and the standard documentation and instructions has improved significantly since the initial pilots. This more efficient process works best if all the LAs sign up to the standard Memoranda of Understanding even if they do not wish to participate in the scheme at its inception.

- 10) The initial findings from the Suffolk pilot, which has been used both for reactive work and specific projects including Moving Goods Safely and Asbestos at Work, suggest that the greatest impact can be achieved if there is HSE/LA/LA cross-warranting on a County Group basis.
- 11) Suffolk have benefited from a strong Chief Environmental Health Officer group with a Health and Safety champion, a active County Liaison Group, some very competent inspectors, a willingness to work in partnership and to challenge tradition and culture, HSE support at Head of Operations, Principal Inspector and Partnership Team level. It would be advantageous for any new schemes to have similar benefits.
- 12) The consultation process has been generally positive with the main concerns being over LA resources and competency. Prospect continue to have concerns but can see a place for selective use for flexible warrants.
- 13) With regards LAs concerns about resources the Memorandum of Understanding reiterates that the involvement in the scheme is entirely voluntary and that there is no obligation on any enforcing authority to act on behalf of, or at the behest of, another enforcing authority. Flexible warrants are not about LAs doing more work but about doing different work. There may be some merit in developing the schemes initially for selective use. There is potential for several of these to run concurrently or consecutively.
- 14) Whilst arrangements for judging competency are included within the Handbook these will be further developed by the Common Competency Framework currently being developed by REHIS, CIEH, HSE and LACoRS. A separate work stream is looking at support, information and training needs for LAs.
- 15) There are currently 7 flexible warrant pilot schemes running. Current indications are that these are likely to wish to continue operating. Our expectation is that there could be around another 14 schemes up and running by April 2008.
- 16) These ideally would be based on a whole County Liaison group signing up to a standard Memorandum of Understanding, even if individual LAs were unable to take part at the inception, and restricted to selective uses. Ideally the County Groups would have a strong professional group and active Partnership Manager support. However not all these elements would be required in every circumstance if there are other strong reasons for setting up a scheme.
- 17) This approach would hopefully go some way to alleviating concerns and help build the case nationally for the continued use of flexible warrants.

ACTION

18) HELA is invited to endorse the adoption of flexible warrants as set out above.

Contact

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