

Health and Safety Executive Senior Management Team Paper SMT/09/125

Meeting Date:		FOI Status:	
Type of Paper:	Below the line	Trim Ref:	2009/430492
FoI Exemptions:			

HEALTH AND SAFETY EXECUTIVE**Senior Management Team****Extension of Delegated Authority for the Metropolitan Police to Enforce under the Health and Safety at Work etc Act 1974 (HSWA)**

A Paper by Carol Grainger

Advisor: Linda-Jane Rigby and Andy Freeman

Cleared by Jane Willis on 29 October 2009

Issue

1. The Metropolitan Police Service is seeking a new agency agreement extending existing delegated powers for a period of 3 months from 1st January 2010 to 31st March 2010 in order to maximise benefit from available funding for the Freight Operators Recognition Scheme (FORS) on safe reliable movement of freight transport which is due to end in March 2010.
2. Background and further information about this request is given in the attached Board paper.

Timing

3. Urgent. The current agency agreement for FORS expires on 31st December 2009.

Recommendation

3. The SMT is asked to:
 - i. give its support to the new agency agreement; and
 - ii. approve the attached paper for submission to the Board.

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Health and Safety Executive Board

Extension of Delegated Authority for the Metropolitan Police to Enforce under the Health and Safety at Work etc Act 1974 (HSWA)

A Paper by Jane Willis

Advisor: Carol Grainger and Linda-Jane Rigby

Cleared by Jane Willis on

Purpose of the paper

1 The Board is asked to agree to the continued delegation of HSWA powers to the Metropolitan Police (MPS) for a further period of 3 months up until 31 March 2010.

Background

2 The Health and Safety Commission granted powers to the MPS in accordance with Section 13 (1) (a) of HSWA at its meeting on 25 July 2006.

3 These powers were initially granted for the duration of a pilot project, The Freight Operators Recognition Scheme (FORS), sponsored by Transport for London (TfL) and aimed at improving the safe, reliable and efficient movement of freight transport within the capital.

4 In 2006 HSE recognised that FORS offered a valuable means of promoting the requirement for employers to properly manage the risks to their employees, and others when driving at work.

5 To forward these aims TfL funded a group of MPS officers with specialist experience of freight vehicles to carry out assessments of companies seeking membership of FORS.

6 MPS believed that in order to bring about the measurable improvements that the scheme was seeking, they would also need to undertake visits to companies whose drivers had committed offences or whose vehicles were involved in collisions and where health and safety management failings (eg scheduling of hours, maintenance of vehicles, competence of drivers) were believed to be the underlying cause.

7 In order to allow MPS to explore the management of driving-related risk with dutyholders in this way, HSE entered an agency agreement delegating limited powers under HSWA. This agreement has been in place since 1st January 2007 and expires on 31st December 2009.

8 Although the agency agreement came into effect in January 2007, much of the early effort was directed at establishing the Commercial Vehicle Education Unit (CVEU), the MPS unit who would carry out this work, and setting up the FORS registration scheme.

9 Despite this CVEU officers have stopped 3,000 Large Goods Vehicles (LGVs) in London using traditional policing powers and visited over 250 companies using the delegated powers. These visits resulted in the issue of 80 action plans requiring action on Work-Related Road Safety (WRRS) issues and the service of 1 Improvement Notice. Dutyholders were also directed to HSE's "Driving at Work" publication and other sources of WRRS guidance.

10 Follow-up visits to these companies showed that these interventions had resulted in dutyholders taking positive action to manage WRRS through the implementation of policies and procedures and the provision of improved training and vehicle maintenance regimes.

11 In addition, MPS attribute a reduction in fatal accident collisions in East London since March 2008, an area which has experienced increased LGV traffic related to the Olympic Games, to interventions led by CVEU. In particular they refer to the ability of officers with delegated powers to provide specialist advice and support and conduct meaningful engagement at company director level.

12 Current financial constraints mean that TfL will only fund the costs of the CVEU in its present form until 31 March 2010. HSE are now working with both TfL and MPS to examine how best to work together in future and to decide whether to seek the agreement of the Board for a further extension of powers. This will be the subject of a separate paper to the Board early in the New Year which will also look at the benefits of the delegated powers arrangement.

13 In the interim MPS would like to continue to operate the arrangement while there is still funding for the CVEU and have approached HSE to request an extension of delegated powers up to the end of the current financial year.

Benefits/risks to HSE

14 The FORS pilot has been received favourably by stakeholders who have been urging HSE to take a more active role in WRRS and is a creative example of working through partners to achieve shared objectives.

15 There could be reputational risk in refusing MPS' request for an extension of the delegated powers until 31 March 2010 which could adversely affect working relationships between the two organisations and TfL.

16 Focus groups run by HSL on behalf of HSE to gauge the effectiveness of delegated powers reported favourably on the positive benefits.

Additional Opportunities for HSE

17 MPS' management interventions to improve the safety of vehicles destined for the Olympics site directly support HSE's own work to manage the on-site risks posed by Olympics traffic. Extending the agency agreement for a further 3 months would enable MPS to continue with this work.

Argument

18 The Board could allow the current agency agreement with MPS to lapse without agreeing to sign a new agreement. This would have the effect of removing the delegated powers. Any further arrangement could be agreed at a future date when more information on impact and future funding options are available. However, it would appear sensible and pragmatic, given results to date and MPS interest in continuing work in this area, to extend the agency agreement for a further 3 months.

Consultation

19 Interested parts of HSE and the Trade Unions were consulted prior to the initial delegation of HSWA powers to MPS and more recently with regard to the proposed extension of these powers. We shall continue to consult in connection with any further issues that arise as the project develops further.

Presentation

20 To date the main industry groups, the Freight Transport Association and the Road Haulage Association have been supportive of CVEU's work on WRRS.

21 MPS are aware that other police forces across the country are watching the scheme with interest and, depending on MPS' experience, may request similar powers.

Costs and benefits

22 Going forward HSE has agreed to provide help and support to MPS as appropriate if they are considering taking formal enforcement action and the provision of opportunities for joint visiting. The costs associated with providing this kind of support are minimal and will be met from current financial budgets.

Action

23 The Board is asked to agree to MPS' request for an extension to the agency agreement which delegates HSWA powers. A copy of the proposed agency agreement is attached as appendix A.

Paper clearance

24 This paper was cleared by the SMT at their meeting on XXXXX.

Appendix A

Agency Agreement

An Agency Agreement between
THE HEALTH AND SAFETY EXECUTIVE
and
THE COMMISSIONER FOR THE METROPOLITAN POLICE

THIS AGREEMENT is made between the Health and Safety Executive (“HSE”) and the Commissioner for the Metropolitan Police (“the Commissioner”) under section 13(3) of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”). It provides for the exercise of functions of the Health and Safety Executive (“HSE”) on behalf of HSE in relation to the Freight Operator Recognition Scheme (“FORS”).

IT IS AGREED THAT:

1. The Commissioner shall be empowered to appoint from time to time in accordance with section 19 of the 1974 Act in writing as inspectors any of the persons specified in paragraph 2 to exercise in the area specified in paragraph 3 for the period specified in paragraph 4 the powers under the 1974 Act specified in paragraph 5 in relation to the persons described in paragraph 6 for the purposes described in paragraph 7. The Commissioner shall notify HSE in writing of any appointment made under this Agreement.
2. The persons who may be appointed in accordance with section 19 of the 1974 Act under this Agreement are police officers appointed to the FORS operational team.
3. The area within which this Agreement shall operate is the Metropolitan Police Authority Area in relation to the driving and use of freight vehicles on a road in the course of work by drivers, and Great Britain in relation to the implementation and enforcement, including investigation, of the provisions of the 1974 Act and of the Management of Health and Safety at Work Regulations 1999 (“the Management Regulations”) set out in paragraph 7 in relation to the driving and use of freight vehicles in the course of work by drivers in the Metropolitan Police Authority Area.
4. The period during which this Agreement will operate is the period of three months beginning on 1st January 2010 and ending on 31st March 2010.
5. The powers under the 1974 Act which may be exercised under this Agreement are those set out in the following sections-

- Section 20(1) and (2)(a), (d), (f), (j), (k) and (l);
 - Section 21;
 - Section 22;
 - Section 38;
 - Section 39.
6. The persons in relation to whom the powers specified in paragraph 5 may be exercised under this Agreement are the following-
- Any employer of any driver of a freight vehicle, including any director, representative or employee of any such employer and, including, in the case of natural persons, any partner in any partnership which employs any driver of any freight vehicle;
 - Any self-employed driver of any freight vehicle.
7. The purposes for which the powers specified in paragraph 5 may be exercised under this Agreement are the implementation and enforcement, including investigation, in relation to the driving and use of freight vehicles in the course of work by drivers, of the following provisions of the 1974 Act and of the Management of Health and Safety at Work Regulations 1999 (“the Management Regulations”)-
- a) The 1974 Act sections 2 and 3;
 - b) The Management Regulations regulations 3, 4, 5, 7, 10 and 13.
 - c) The 1974 Act section 33(1) in relation to the provisions in (a) and (b).

Dated thisday of.....2009

.....
Signed on behalf of HSE

.....
Signed on behalf of the Commissioner for the Metropolitan Police

Explanatory Note

1. This agreement empowers the Commissioner for the Metropolitan Police to appoint members of his service to perform the functions of Her Majesty's Inspectors of Health and Safety in relation to the powers listed in paragraph 5 for a period of three years for the purposes of the operation of the Freight Operator Recognition Scheme.
2. The Freight Operator Recognition Scheme is a project to encourage freight operators in London to implement policies to improve safety, reduce environmental impact, and improve efficiency of movement and delivery. The agreement allows the ambit of the Scheme to include the management of risks to health and safety associated with the driving of freight vehicles in the course of work.