

## **Hampshire Fire and Rescue Authority**

### **Finance and General Purposes Committee**

**Item 6**

**4 November 2015**

### **Enforcement of the Fire Safety Order: Cross Border Working Within the Network Fire Control Partnership Boundaries**

#### **Report of the Chief Officer**

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## **1 Summary**

1.1 The Network Fire Control Partnership (NFCSP) allows for the mobilisation of the nearest fire and rescue service asset across Devon, Somerset Dorset Wiltshire and Hampshire. The principle of nearest asset leads to cross border deployment. Significant work is being undertaken to ensure all assets currently mobilised by fire controls can be mobilised on the principle of nearest asset. Currently fire controls mobilise warranted 'authorised inspectors', with the relevant skill set, to any serious fire safety concern in their respective counties. As with all other assets, to enable this skill set to be mobilised across borders will require the alignment of training and procedures. However, due to authorised inspectors being appointed by fire authorities to enforce the fire safety order within the geographical boundaries of their respective counties, this also requires cross border warrant cards. Section 101 of the 1972 Local Government Act (LGA 1972) provides the means for FRAs to agree to delegate or jointly discharge functions and so provides a power to enable the authorisation of cross border enforcement.

## **2 Recommendations**

2.1 That the following be recommended to the Authority:

- 2.1.1
- It should, under Section 101 LGA, proceed with a formal agreement, within the Network Fire Control Partnership (NFCSP) allowing for its powers to enforce the Regulatory Reform (Fire Safety) Order 2005 (the Order) to be delegated/exercised jointly with other partners in the NFCSP.
  - Authority should be delegated to the Chief Fire Officer to finalise the terms of the formal agreement.
- 2.1.2
- The current authority delegated to the Chief Fire Officer to appoint inspectors and be empowered to inspect under the Order is extended to include the authority to appoint as inspectors individuals employed as inspectors by other authorities within NFSCP and for them to be empowered to inspect.
  - Authority should be delegated to the Clerk to the Authority to make the

necessary changes to the Scheme of Delegation.

2.1.3 The training and procedures operated by the NFSCP should be such that the cross border fire safety warrants are only:

a) to be issued if all authorities in the NFSCP agree to delegating/jointly exercising these powers pursuant to a suitable agreement;

b) issued to individuals who would carry out the same role in their own Authority's boundaries, and that there is a confirmation of competence from the home Authority;

c) to be used by officers when they are tasked by the NFSCP and the officer is provided with an incident number.

### **3 Introduction and Background**

3.1 The NFSCP will ensure that the nearest available emergency response asset is mobilised to an incident and will include over the border support from adjoining FRS under the provisions of Section 13 and 16 of the Fire and Rescue Services Act 2004.

3.2 As part of the NFSCP response protocol, it is intended that the nearest flexi duty authorised inspector will be mobilised for all serious fire safety matters as the nearest fire safety asset.

3.3 However, currently where an incident occurs within the NFSCP area and the nearest or only available duty 'authorised inspector' is in a neighbouring FRS, they cannot legally carry out the functions of the Order as they are not authorised to do so outside of their own FRS border.

3.4 To be legally compliant all flexi duty officers who as 'authorised inspectors' hold fire safety warrant cards will also require a cross border fire safety warrant card giving them the authority to enforce the Order within all counties in the NFSCP.

3.5 These warrant cards can only be issued if each partner Authority has formally agreed that its powers to enforce the Order can be delegated/exercised jointly with all other authorities within the network fire control partnership.

### **4 Enforcing the Fire Safety Order**

4.1 Article 26(1) of the Order places on the Fire and Rescue Authority a duty to enforce the Order. This includes the powers to prohibit the use of premises. These powers are only used when the officer signing the Notice has made an informed assessment to ensure that the Order applies to the Premises and that there is a risk of death or serious injury within the Premises.

4.2 To ensure these powers are used appropriately the FRS appoints suitably trained

individuals ('authorised inspectors') who also hold the relevant level of management authority within the FRS. This process is managed through: training and the maintenance of competence; the issuing of warrant cards; and the recording of these skill sets on command and control data bases. These powers can only be used within the geographical boundaries of the authority that has appointed the inspector.

## **5 Delegation of Authority**

- 5.1 The Department for Communities and Local Government (DCLG) provides guidance for fire and rescue authorities and other bodies regarding their duty to enforce fire safety in non-domestic premises, (under the Order)

Guidance note 1, Enforcement, paragraph 118;

“Para 118; There are specific powers contained in section 101 of the Local Government Act 1972 which make specific provision for one local authority to arrange with another local authority for the second authority to exercise the functions of the first authority.

This may be useful to enforcing authorities where enforcement at sports grounds with regulated stands means that there are two enforcing authorities. There may be other enforcement areas where this provision is helpful to make effective use of resources. Enforcing authorities wishing to explore this possibility should consult their own lawyers in the first instance. “

From the above paragraph it is clear that DCLG's preferred gateway for delegation of fire safety duties is the LGA 1972. Legal advice has been sought and has confirmed that s101 of the LGA 1972 may be used by FRAs to delegate or jointly discharge functions and so may be used to facilitate cross border enforcement of the Order. .

- 5.2 This guidance refers to Section 101(5) of the LGA 1972 Act which states that - unless prohibited by legislation - an authority may arrange for any of its functions to be discharged by another authority. Two or more local authorities can also arrange for their functions to be exercised jointly. Such joint functions can be delegated to a joint committee or to an officer of one of the authorities.
- 5.3 Each Fire Authority within the partnership has delegated the power to appoint Fire Safety Inspectors to the Chief Fire Officer (CFO) within their Scheme of delegations. As follows:  
Dorset, section 7.4, Fire Safety.  
Devon and Somerset, Section 4 paragraph 4.14  
Hampshire, Section C, paragraph 3, Appointment of Fire Service Inspectors  
Wiltshire, Scheme of delegation to officers, paragraph 17
- 5.4 As such, effective cross border working for significant fire safety concerns can be facilitated by each fire authority within the NFCSP agreeing for its functions to be delegated or exercised jointly through the joint issuing of cross border warrants

supported by relevant processes and training, and by expressly stating that the CFO can appoint inspectors from other authorities within the partnership on order to enforce the Order.

## **6 Supporting our corporate aims and objectives**

- 6.1 This delegation of authority allows for full use to be made of the economies and benefits of NFCSP.

## **7 Risk analysis**

- 7.1 A wrongly served prohibition Notice is a significant risk to a FRS, it may result in an appeal case and costs order being taken against the FRS, reputational damage and the misuse of public finances to deal with the appeal.
- 7.2 To mitigate this risk the NFCSP and Strategic Board's direction is that the nearest officer is to attend to capture information and make an early intervention if required and subsequently hand over the investigation to the home Service at the earliest opportunity to record and progress. Requests for advice via the telephone would be made to the home Service.

## **8 People Impact Assessment**

- 8.1 The proposals in this report are considered compatible with the provisions of the European Convention on Human Rights, the Human Rights Act 1998, and the Race Relations (Amendment) Act 2000.

## **9 Resource implications**

### **9.1 Human Resources**

The implementation of cross border fire warrants will require significant work to be undertaken by fire safety leads from each county to ensure that the underlying merging of procedures and training is completed in the required timescales.

### **9.2 Physical Resources**

Each relevant authorised inspector will have to hold a cross border warrant signed by the delegated officers.

## **10 Consultation**

- 10.1 This paper has been produced in conjunction with fire safety leads across the NFCSP and under the governance of the NFCSP Operational Alignment and Efficiency Group, who have been consulted on its contents. The clerk to HFRA and its legal advisors have been consulted and provided legal input.

## **11 Conclusion**

- 11.1 Effective cross border work makes greater use of the resources of each authority within the partnership. And by allowing nearest asset to include assets within the whole of the partnership a better service can be provided to the public.
- 11.2 To enable this approach to also apply to fire safety resources requires each authority within the partnership to agree that its powers to enforce the fire safety order can be exercised jointly with all other authorities within the network fire control partnership.( Draft agreement attached as appendix a.)

## **12 Background papers**

- 12.1 The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of the report:

Legal advice Re: Over the border mobilising of FS officers, David Stotesbury 2<sup>nd</sup> June 2015.

Cross Border Warrants Angus Nairn Enforcement Adviser, Dorset Fire & Rescue Service 13<sup>th</sup> August 2015

Note: The list excludes: (1) published works; and (2) documents that disclose exempt or confidential information defined in the Act.