

Delegated Decisions by Cabinet Member for Safer & Stronger Communities

Monday, 10 May 2010 at 4.20 pm, or on the rising of the Safer & Stronger Communities Scrutiny Committee if later

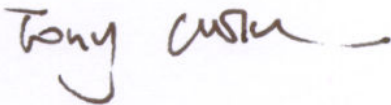
County Hall, meeting room 2

Items for Decision

The items for decision under individual Cabinet Members' delegated powers are listed overleaf, with indicative timings, and the related reports are attached. Decisions taken will become effective at the end of the working day on Tuesday 18 May 2010 unless called in by that date for review by the appropriate Scrutiny Committee.

Copies of the reports are circulated (by e-mail) to all members of the County Council.

These proceedings are open to the public



Tony Cloke
Assistant Head of Legal & Democratic Services

April 2010

Contact Officer: **Kath Coldwell**
Tel: (01865) 815902; E-mail: kath.coldwell@oxfordshire.gov.uk

Note: Date of next meeting: 9 June 2010

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

Items for Decision

1. Questions from County Councillors

Any county councillor may, by giving notice to the Proper Officer by 9 am on the working day before the meeting, ask a question on any matter in respect of the Cabinet Member's delegated powers.

The number of questions which may be asked by any councillor at any one meeting is limited to two (or one question with notice and a supplementary question at the meeting) and the time for questions will be limited to 30 minutes in total. As with questions at Council, any questions which remain unanswered at the end of this item will receive a written response.

Questions received after the despatch of the agenda, but before the deadline, will be shown on the Schedule of Addenda circulated at the meeting, together with any written response which is available at that time.

2. Declarations of Interest

3. Petitions and Public Address

EXEMPT ITEM

It is RECOMMENDED that the public be excluded during consideration of the annex to report CMDSSC7 since it is likely that if they were present during its consideration there would be disclosure of exempt information as defined in Part I of Schedule 12A to the Local Government Act 1972 (as amended) and specified below in relation to that item:

3. Information relating to the financial and business affairs of any particular person including the authority withholding that information

and since it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, on the grounds that such disclosure might prejudice the commercial position of Lion Apparel Ltd.

Note: The report itself does not contain exempt information and is therefore available to the public.

The exempt information is contained in the restricted annex to the report that has been circulated only to those members and officers entitled to receive it.

THE ANNEX HAS NOT BEEN MADE PUBLIC AND SHOULD BE REGARDED AS STRICTLY PRIVATE TO THOSE MEMBERS AND OFFICERS ENTITLED TO RECEIVE IT.

4. Adult Learning Service: Use of Premises (Pages 1 - 4)

Forward Plan Ref: 2010/046

Contact: Jane Dixon, Head of Adult Learning Tel: (01865) 458794

Report by Head of Community Services (**CMDSSC4**).

4.20 pm or on the rising of the Safer and Stronger Communities Scrutiny Committee if later.

The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve the changes proposed in the report.

5. Trading Standards Service Self-Assessment Against the Regulator's Compliance Code (Pages 5 - 14)

Forward Plan Ref: 2010/049

Contact: Richard Webb, Deputy Head of Trading Standards, Tel: (01865) 815791

Report by Director of Community Safety & Shared Services & Chief Fire Officer (**CMDSSC5**).

The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve the Trading Standards Service following the Local Co-ordinators of Regulatory Services (LACORS) guidance on the Regulator's Compliance Code when determining action required to meet the requirements of this Code.

6. Arrangements for Inspection and Licensing of Petroleum and Explosives Storage in Buckinghamshire (Pages 15 - 18)

Forward Plan Ref: 2010/050

Contact: Richard Webb, Deputy Head of Trading Standards, Tel: (01865) 815791

Report by Director for Community Safety & Shared Services & Chief Fire Officer (**CMDSSC6**).

The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to authorise the Head of Trading Standards and Community Safety to enter into an agreement with Buckinghamshire County Council to provide licensing and inspection services for petroleum spirit and explosives subject to satisfactory terms being negotiated with Buckinghamshire County Council.

7. Firefighters Personal Protective Equipment (Fire Kit) (Pages 19 - 26)

Forward Plan Ref: 2010/069

Contact: Colin Thomas, Acting Deputy Chief Fire Officer, Tel: (01865) 855206

Report by Acting Deputy Chief Fire Officer (**CMDSSC7**).

The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve an exemption from the tendering requirements of Oxfordshire County Council's Contract Procedure Rules and to:

- (a) ***approve an extension to the existing contract with Lion Apparel Ltd for a period of 6 months, with an option to withdraw sooner if that is feasible;***
 - (b) ***delegate authority to the Director for Community Safety and Shared Services and Chief Fire Officer to extend the contract for a further 3 months should the new contract not be operational in sufficient time to allow for a seamless transition.***
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Division(s): Banbury Grimsbury & Castle; Isis; Cowley & Littlemore; North Hinksey & Wytham; Thame & Chinnor; Eynsham; Grove & Wantage

CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES 10 MAY 2010

ADULT LEARNING SERVICE: USE OF PREMISES

Report by Head of Community Services

Introduction

1. Like all publicly funded services, the Adult Learning Service is required to make efficiencies. The requirement on this Service is particularly compelling for a number of reasons. It is entirely dependent for its funding on sources outside the County Council. Its principal funder is the Learning and Skills Council (LSC), whose financial support has reduced significantly in recent years, often at very short notice. The LSC was abolished from 1 April 2010 and its functions have been taken on by a variety of other bodies – in the case of adult learning, most notably by a new Skills Funding Agency, although a range of national and regional funding and commissioning arrangements is still being considered. There is therefore likely to be continuing uncertainty about funding for the Service in the future.
2. Another significant source of funds is the fees paid by learners, especially for leisure learning classes. Reductions in national subsidy for such classes have led to rises in the fees charged. There has been some customer resistance to this which, possibly combined with the impact of the current recession, makes it ever more challenging to attract learners.
3. In order to mitigate the impact of reductions in funding, the Adult Learning Service has undergone a series of major changes in recent years, including the loss of staff, reductions in management capacity, and a rigorous reappraisal of the range of learning it is able to offer.
4. In order to reduce costs further the Service has undertaken a review of its use of premises, and this report outlines the actions it intends to take as a result.

Proposals

5. The following proposals are designed to make revenue savings to the Service, largely by withdrawing administrative presence from a number of locations, but not by diminishing actual learning provision around the county. This will minimise the impact, if any, on the public, whose only notable contact with administrative staff locally in the past has been to register for courses. This activity is now mainly carried out by telephone or online.
6. It is intended to withdraw Adult Learning administrative staff from the following locations.

- **The Mill Arts Centre, Banbury.** An arrangement to base administrative staff here has never been fully implemented and so the impact on learners will be nil. The range of learning on offer at the Mill will not be affected.
- **SS Mary and John Primary School, Oxford.** This location is used entirely for administrative and management purposes. Staff will be relocated to Cricket Road Centre.
- **Littlemore Adult Learning Centre (Oxford Academy).** Teams based here will be moved to the Blackbird Leys Learning Centre and to Holton. A post of Administrative Manager will be deleted as a result, the saving to be achieved through normal staff turnover. Learning provision will continue at Littlemore; plans for the Academy envisage shared space with the public library.
- **Cumnor Adult Learning Centre (Matthew Arnold School).** Staff based here will be relocated to The Union. The school has indicated that it has a pressing need for additional space, which this move will meet. Adult learning classes will continue at the school.

7. It is proposed to withdraw completely from Chinnor Adult Learning Centre, including the provision of classes. This Centre has not been staffed and has had a low level of provision for some years. Classes will continue to be offered in alternative venues locally.
8. In addition, negotiations are underway to reduce the charges paid to two schools where use of space by the Service has reduced. These are Bartholomew School (Eynsham) and King Alfred's (Wantage).
9. Further savings are expected to be made by more efficient use of budgets for the hire of external learning venues, and by a change in the use of a courier service.

Financial implications

10. The expected savings (in a full financial year) from these proposals are as follows.

Proposal	£
Withdrawal of administrative staff from four locations. (based on running costs to the Service)	15,500
Deletion of post of Administrative Manager (inc on-costs)	31,000
Total withdrawal from Chinnor Adult Learning Centre	1,700
Renegotiation of charges at two schools	5,500
Target saving in external hires (10%)	6,400
Change in courier service arrangements	8,000
Total	68,100

11. No assumption is made with regard to any savings from vacating Chinnor Adult Learning Centre (other than the running costs incurred by the Service).

12. The achievement of this level of savings is an important part of the Service's strategy to ensure that its revenue budget is controlled in line with the five-year plan agreed by the Cabinet in 2008/09. All other major components of that plan have now been implemented, and it is predicted that the current financial year's outturn will be broadly in line with that plan.

Risks

13. The main risks associated with this proposal are:
- A risk of not fulfilling the Service's financial plan if the predicted savings are not achieved. This is to be mitigated in two ways: firstly through having adopted conservative estimates/targets for the savings, and secondly through regular management monitoring of implementation and actual savings.
 - Possible risk to the reputation of the Service if it is perceived that these changes will have an adverse effect on learning provision. The chief method of mitigation of this risk is through communication with learners and other stakeholders including local councillors.

RECOMMENDATION

14. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve the changes proposed in this Report.**

Richard Munro
Head of Community Services
Social & Community Services

Contact officer: Jane Dixon, Head of Adult Learning Tel: (01865) 458794

Background papers:

April 2010

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Division(s): N/A

CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES – 10 MAY 2010

TRADING STANDARDS SERVICE SELF-ASSESSMENT AGAINST THE REGULATOR'S COMPLIANCE CODE

Report by Director for Community Safety and Shared Services

Introduction

1. The Regulators' Compliance Code is a statutory code that any specified regulator must have regard to:
 - (a) when determining any general policy or principles about the exercise of specified functions; or
 - (b) when exercising a specified regulatory function which is itself a function of setting standards or giving general guidance about regulatory functions.
2. This Code applies to Trading Standards Services in performing most of their enforcement functions. Failing to comply with the provisions of the Code could undermine any formal legal action taken by the Service in response to any infringements found.
3. Since the Code is statutory the Trading Standards Service is required to ensure that its policies and procedures are fully compliant with its requirements.

The Regulator's Compliance Code

4. The Regulator's Compliance Code was introduced following the Hampton Review of administrative burdens on business. It aims to promote efficient and effective approaches to regulatory inspection and enforcement with a view to improving the outcomes of regulation without imposing unnecessary burdens on business.
5. The Code asks regulators to consider:
 - (a) **Supporting economic progress.**
Performing regulatory duties should not impede business productivity.
 - (b) **Risk assessment.**
Undertaking a risk assessment of all their activities.
 - (c) **Information and advice.**
Providing information and advice in a way that enables businesses to clearly understand what is required by law.

- (d) **Inspections.**
Only performing inspections following a risk assessment, so resources are focused on those least likely to comply.
 - (e) **Data requirements.**
Collaborating with other regulators to share data and minimise demand on businesses.
 - (f) **Compliance and enforcement actions.**
How formal enforcement actions, including sanctions and penalties, should be applied following the Macrory principles on penalties.
 - (g) **Accountability.**
Increasing the transparency of regulatory organisations by asking them to report on outcomes, costs and perceptions of their enforcement approach.
6. The Trading Standards Service is broadly compliant with the requirements of the Code. In particular, the Service meets many of the requirements through the application of the County Council's Enforcement Policy when making decisions regarding identified infringements of legislation and in publishing performance and service standards annually in its Service and Performance Plan. Some additional actions have been identified to address aspects of the Code's requirements, particularly in relation to engagement with business in drafting and issuing guidance on legislative requirements. The full self-assessment is included in Annex 1.
7. The requirements of the Code are summarised within the self-assessment in Annex 1.
8. The Code itself does not distinguish between the role of national regulators and that of local regulators. Therefore, it is possible to apply different interpretations of the Code's requirements. The Local Coordinators of Regulatory Services (LACORS) has issued guidance on the Code in order to clarify where they believe that a national regulator has lead responsibility for complying with the Code's requirements and where local authorities should implement the requirements. For example, LACORS state that if a local authority follows a nationally developed and published risk assessment methodology in determining its local inspection plans, then the authority will be complying with the provisions of the Code. The responsibility for ensuring that the risk assessment methodology meets the requirements of the Code lies with the national body that publishes the scheme.
9. The Trading Standards Service has completed a self-assessment against the requirements of the Code. In doing so it has followed the LACORS guidance in order to determine which aspects of the Code the local authority has responsibility for. The Cabinet Member's approval for this approach is being sought.

10. There is a low level of risk to the County Council in adopting this approach. The Council has a statutory responsibility to 'have regard to' the Code. However, regulators are not bound to follow a provision of the Code if they properly conclude that the provision is either not relevant or is outweighed by another relevant consideration. Decisions to depart from any provision of the Code should be properly reasoned and based on material evidence. By following existing procedures in relation to decision making that meet the requirements of the Code (e.g. the County Council's Enforcement Policy), there is no additional risk to any enforcement actions that the authority may take.
11. If the LACORS guidance was not followed in determining the action that the Trading Standards Service should take to meet the requirements of the Code, then a number of actions in addition to those identified in Annex 1 would be required. For example, the Service would need to consult businesses on the risk assessment methodology that the Service's inspection plan is based on.
12. The implementation of the requirements of the Code will lead to better engagement with, and reduce the burdens on, Oxfordshire businesses. A summary of the actions arising from the self-assessment is included in Annex 1.
13. The Code applies to other regulatory functions performed by the County Council. It is intended that Trading Standards will engage with other relevant services to support self-assessments within those services. By approving this approach to interpreting the Code in respect of Trading Standards, it is envisaged that a similar approach can be taken by other services without the need for further approval to be sought.

RECOMMENDATION

14. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve the Trading Standards Service following the Local Co-ordinators of Regulatory Services (LACORS) guidance on the Regulator's Compliance Code when determining action required to meet the requirements of this Code.**

JOHN PARRY
Director for Community Safety & Shared Services

Background papers: N/A

Contact Officer: Richard Webb, Deputy Head of Trading Standards and
Community Safety Tel: (01865) 815791

April 2010

**Summary of Actions arising from the Trading Standards Service
Compliance Code Self-Assessment**

APRIL 2010

Draft Action plan (subject to formal approval)

Business Engagement- Advice and Guidance

The process for communicating legal requirements relating to regulatory activities is to be improved to ensure the required information is provided in a timely fashion by the means preferred by businesses.

Business advice and information produced by the service is to be improved by engaging businesses in the design of such information to ensure it best suits business's needs.

Business Engagement- Inspection and Information Gathering

Inspection processes to be improved to ensure positive feedback is provided where appropriate.

Information collected from businesses to be minimised through a review of requirements imposed on businesses to provide information to us (for example, when applying for licences).

Internal Improvements

Decision making processes relating to identified breaches of legislation to be improved to reflect the full range of formal and informal options available to the authority.

Staff awareness of the Compliance Code and its requirements to be improved to ensure continuing compliance.

CHECKING COMPLIANCE WITH THE REGULATORS' COMPLIANCE CODE

Responsibility		OXFORDSHIRE
Has the relevant legislation and the parts of the authority enforcing it been identified?	SELF-ASSESSMENT RELATES TO OXFORDSHIRE COUNTY COUNCIL TRADING STANDARDS SERVICE ONLY.	
Have staff responsible for ensuring compliance with the Code been identified and informed?	TRADING STANDARDS SENIOR MANAGEMENT RESPONSIBILITY HAS BEEN AGREED. NO STAFF TRAINING/AWARENESS OF THE CODE YET UNDERTAKEN. <u>ACTION 1</u> - STAFF TRAINING TO BE COMPLETED ONCE SELF-ASSESSMENT IS COMPLETE.	
Economic progress		
Is a process for measuring and minimising the burden of regulatory intervention in place?	<p>THE LACORS GUIDANCE STATES-</p> <p><i>National regulators and sponsoring departments will take the lead on this area due to the requirements on them to</i></p> <ul style="list-style-type: none"> ▪ <i>undertake impact assessment on policy implementation, which includes a small business test;</i> ▪ <i>deliver on their simplification plans.</i> <p><i>By complying with the Enforcement Concordat and Code for Crown Prosecutors</i></p> <p>http://www.cps.gov.uk/Publications/docs/code2004english.pdf</p> <p><i>councils already undertake enforcement and other interventions on a proportionate basis therefore LACORS envisages that there should be no change for councils' working practices.</i></p> <p><i>LACORS will work with government departments to ensure that they allow for reasonable variations to meet local government priorities.</i></p> <p><i>LACORS understands that Local Better Regulation Office (LBRO) will be producing further guidance on the way councils may need to consider the impact of their work in relation to economic progress. LACORS will be working closely with LBRO to develop any further advice in this area.</i></p> <p>THE AUTHORITY HAS A PUBLISHED ENFORCEMENT POLICY WHICH INCLUDES REFERENCE TO THE ENFORCEMENT CONCORDATE AND THIS CODE. THE CODE FOR CROWN PROSECUTORS IS APPLIED WHEN CONSIDERING FORMAL ENFORCEMENT ACTION. THEREFORE NO ACTION IS REQUIRED AT A LOCAL LEVEL.</p>	
Is a means of review in place?	N/A.	

Risk assessment	
Does risk assessment precede and inform all aspects of regulatory activity to ensure most effective targeting?	YES. LACORS RISK ASSESSMENT SCHEME APPLIED WHERE NECESSARY. OTHER ACTIVITY IS INTELLIGENCE BASED AND AN INTELLIGENCE OFFICER HAS BEEN APPOINTED TO DEVELOP INTELLIGENCE LED ENFORCEMENT ACTIVITIES.
Are businesses consulted on methodologies?	NOT APPLICABLE AS NATIONAL METHODOLOGIES FOLLOWED AND NO LOCAL SCHEMES HAVE BEEN ADOPTED.
Are methods subject to review and continuous improvement?	NOT APPLICABLE AS NATIONAL METHODOLOGIES FOLLOWED AND NO LOCAL SCHEMES HAVE BEEN ADOPTED.
Advice and guidance	
Are legal requirements relating to regulatory activities promptly communicated to businesses, including changes?	IN PART, THROUGH THE WEBSITE AND TARGETED E-MAILS TO SOME FOOD BUSINESSES. <u>ACTION 2</u> - IMPROVE PROCESSES FOR COMMUNICATING CHANGES THROUGH THE WORK OF THE COMMUNITY LIAISON OFFICER FOR THE BUSINESS COMMUNITY.
Is advice, information and guidance made available to businesses in a range of formats?	YES ELECTRONICALLY AND IN HARD COPY AND THROUGH BUSINESS ENGAGEMENT EVENTS/TALKS.
Are businesses involved in developing the guidance?	NO. <u>ACTION 3</u> - SEEK BUSINESSES VIEWS ON NEW GUIDANCE.
Is the effectiveness monitored?	PARTLY THROUGH CONSULTATION. <u>ACTION 4</u> - SEEK BUSINESSES VIEWS ON OUR EXISTING GUIDANCE.
In offering advice, are statutory requirements distinguished from 'best practice' guidance?	YES, RECORDED IN POST INSPECTION/INTERVENTION REPORTS.
Are basic advice services to businesses offered free of charge?	YES.
Can help be sought by businesses	YES.

without triggering enforcement action?	
Inspections and other visits	
Except for dealing with requests or acting on intelligence, do all visits and inspections come from a risk-assessment process?	YES, AS EXPLAINED ABOVE.
Is random inspection kept to a minimum and solely to test risk-assessment methodology?	YES.
Is positive feedback from inspections given to businesses to reinforce and encourage good practices?	IF SO, WOULD NEED TO SEEK OUT EVIDENCE – POST INSPECTION REPORTS MAY IDENTIFY SOME AREAS OF GOOD PRACTICE, BUT THESE ARE NOT ANALYSED <u>ACTION 5</u> - FOLLOWING A STAFF BRIEFING ON THE REQUIREMENTS OF THIS CODE, IMPLEMENT A PROCESS FOR CAPTURING EXAMPLES OF POSITIVE FEEDBACK.
Are steps in place to ensure collaboration between different regulators on inspections to minimise burdens on businesses?	YES. PARTICULAR LINKS WITH POLICE, FIRE AND ENVIRONMENTAL HEALTH OFFICERS. REVISED VERSION OF RETAIL ENFORCEMENT PARTNERSHIP (THE SMARTER INSPECTION SCHEME) ADOPTED BY OXFORDSHIRE DURING 2009/10.
Information requirements	
Before asking businesses for data has a cost-benefit analysis been undertaken?	STATUTORY REQUIREMENTS (I.E. LICENSING OR REGISTRATION PROCESSES) FOLLOWED FOR MOST DATA COLLECTION THAT IS UNDERTAKEN. NO FURTHER ROUTINE DATA COLLECTION UNDERTAKEN EXCEPT- <ul style="list-style-type: none"> - RECORDING OF BASIC BUSINESS DETAILS DURING INTERVENTIONS - SATISFACTION SURVEYS (EXTENSION OF NI182) (VOLUNTARY)
Is there a process to ensure sharing of data between regulators?	YES. DEVELOPED AS PART OF THE SMARTER INSPECTION SCHEME.

<p>Are forms designed with input from businesses?</p>	<p>NO. <u>ACTION 6</u>- CONSULT BUSINESSES ON THE DESIGN OF FORMS (WHICH WE HAVE CONTROL OVER) ONCE THE SERVICES DIRECTIVE IMPLEMENTED.</p>
<p>Compliance and enforcement actions</p>	
<p>Are positive incentives in place to reward businesses that consistently achieve good levels of compliance?</p>	<p>YES. WE OPERATE THE BUY WITH CONFIDENCE SCHEME AND WILL RUN THE FARMER OF THE YEAR AWARD THIS YEAR. RISK RATINGS REFLECT THE BUSINESSES COMPLIANCE RECORD.</p>
<p>Are the circumstances of any breach discussed with a business before formal action is taken?</p>	<p>YES, EXCEPT IN RELATION TO MATTERS REQUIRING IMMEDIATE ACTION IN ACCORDANCE WITH THE ENFORCEMENT POLICY AND CONCORDATE.</p>
<p>Do any sanctions or penalties comply with Macrory principles?</p>	<p>YES AND THE RANGE OF ACTIONS THAT MAY BE TAKEN IN RELATION TO ANY INFRINGEMENT IS STATED IN THE ENFORCEMENT POLICY ALONGSIDE THE DECISION MAKING PROCESS. HOWEVER, THE PRINCIPLES ARE NOT EXPLICITLY STATED IN THE ENFORCEMENT DECISION MATRIX. <u>ACTION 7</u>- UPDATE THE ENFORCEMENT DECISION MATRIX TO INCLUDE STATEMENT OF MACRORY PRINCIPLES.</p>
<p>Is an enforcement policy published?</p>	<p>YES AND INCLUDES REFERENCE TO THE CODE AND DECISION MAKING PROCESS.</p>
<p>Are outcomes of regulatory activity measured?</p>	<p>YES THROUGH THE REVIEW OF THE ANNUAL BUSINESS PLAN AND NATIONAL AND LOCAL INDICATORS.</p>
<p>Is the choice of enforcement action justified externally year on year?</p>	<p>WE ABIDE BY THE ENFORCEMENT CONCORDAT AND TEST EACH CASE FOR EVIDENTIAL AND PUBLIC INTEREST CRITERIA. OUR ANNUAL BUSINESS PLAN INCLUDES A SUMMARY OF PERFORMANCE FOR THE PREVIOUS YEAR WHICH INCLUDES OUTCOMES AND RATIONALE FOR ACTION TAKEN.</p>
<p>Does follow-up to enforcement action happen?</p>	<p>YES. A TARGET IS SET EACH YEAR TO BRING ALL NON COMPLIANT BUSINESSES TO A STATE OF COMPLIANCE.</p>
<p>Is the whole process of regulation transparent?</p>	<p>YES.</p>
<p>Are reasons for formal enforcement action given to a</p>	<p>YES.</p>

business at the time it is taken, together with details of relevant appeals procedures?	
Are inspectors enabled to be consistent in similar situations?	YES, THROUGH TRAINING, THE QUALITY MANAGEMENT SYSTEM WORK INSTRUCTIONS AND PROCEDURES.
Accountability	
Are effective consultation processes with businesses in place?	YES THROUGH NI182 CONSULTATION, WHICH INCLUDES ADDITIONAL QUESTIONS AND FACE TO FACE FEEDBACK VIA THE COMMUNITY LIAISON OFFICER- BUSINESS COMMUNITY.
Are employees courteous and efficient in their dealings with businesses?	YES, EVIDENCE FROM CONSULTATION.
Are comments and feedback acted on?	YES (ALTHOUGH WE RECEIVE VERY FEW COMMENTS).
Is the complaints procedure publicised, including the right to complain to the Local Government Ombudsman?	YES.
Decision making	
Are reasons for decisions not to comply with the Code properly documented?	NOT RELEVANT AT THIS TIME.

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Division(s): N/A

CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES – 10 MAY 2010

ARRANGEMENTS FOR INSPECTION AND LICENSING OF PETROLEUM AND EXPLOSIVES STORAGE IN BUCKINGHAMSHIRE

Report by Director for Community Safety & Shared Services

Introduction

1. Licences for the storage of petroleum spirit are issued by the Trading Standards Service. Following the issue of a licence, the authority should inspect the licensed premises according to a frequency determined by a Health and Safety Executive risk assessment scheme. Due to the need, under the Health and Safety at Work Act 1974, to appoint only 'suitable qualified' persons to complete the inspections, typically only a few officers are trained and competent to complete these inspections in each local authority.
2. Persons storing fireworks must be licensed or registered to do so. The County Council is responsible for registering and licensing most firework storage and supply, except in relation to manufacturers and large quantities. The County Council also has responsibility to ensure that safe storage requirements are met at licensed or registered premises.
3. The legal framework in respect of these responsibilities, involving licensing and inspection based services by specialist officers, lends itself well to shared services between local authorities.
4. This report seeks agreement to provide licensing and inspection services for and on behalf of Buckinghamshire County Council in respect of petroleum spirit and explosives.

Proposed Joint Enforcement Arrangements

5. Buckinghamshire County Council Trading Standards Service and Oxfordshire County Council Trading Standards Service have identified an opportunity to provide more efficient licensing and enforcement arrangements in the two counties. Both parties wish to enter into an agreement whereby Oxfordshire Trading Standards Service will provide the licensing and inspection function in Buckinghamshire on behalf of Buckinghamshire Trading Standards Service. Oxfordshire County Council will receive a fee for providing this service. The agreement will initially be for a 12 month period of time, with the option to extend this if all parties are satisfied. The agreement will include subject areas such as payment schedule, monitoring and review, termination clauses, disputes and arbitration and specification of the services to be provided.
6. The services to be performed by Oxfordshire Trading Standards on behalf of Buckinghamshire Trading Standards are likely to be as follows:

Petroleum Spirit:

- Complete all duties of the Petroleum Licensing Authority which is a statutory function of the Local Authority or delegated authority.
- Licence all new petroleum storage sites in Buckinghamshire (this will include checks on new works/rebuilds etc. to ensure compliance).
- Renew all current licensed premises in Buckinghamshire upon licence expiry.
- Transfer licenses as and when required.
- Inspect all Petroleum storage premises on a risk based programme of inspections (following the national risk scheme).
- Maintain and update site files for current and decommissioned sites.
- Respond to requests for environmental searches when received.
- Visit existing sites where works are being undertaken to ensure compliance with storage requirements.

Explosives:

- Complete all duties of the Explosives Licensing Authority which is a statutory function of the Local Authority or delegated authority.
- Issue all new explosive licences and registrations.
- Renew all current licences and registrations.
- Issue new all year round sales and supply licences.
- Inspect all relevant premises inline with an agreed risk based system (from our initial meeting we expect this to be one visit every two years).

Generic:

- Ensure that all sites are compliant with the relevant legislation or brought into compliance by appropriate enforcement action.
- Complete inspection forms for each premises visit.
- Supply 24 hour emergency call out to respond to incidents using a dedicated pager system (subject to a maximum number of hours per year, with additional time to be charged).
- Attend South East Licensing Coordination Group meetings on behalf of Buckinghamshire as well as Oxfordshire County Council.
- Training of Buckinghamshire County Council staff on termination of the contract, if required.
- Assist in the preparation of any legal proceedings, including attendance at court where required, for any offence directly related to the agreement.

7. Enforcement actions (i.e. investigations of identified breaches and formal legal action) will be outside the scope of the agreement. Oxfordshire Trading Standards Service will undertake investigations on behalf of Buckinghamshire Trading Standards in respect of these enforcement responsibilities but these will be charged for separately at an hourly rate. Formal legal action, if necessary, will be taken by Buckinghamshire County Council.
8. An assessment of the additional burden on Oxfordshire Trading Standards Service has been completed. This assessment concludes that no additional staff will be required by Oxfordshire Trading Standards Service. The licensing and inspection responsibilities will be undertaken by the existing Petroleum and Explosives enforcement team. The team have confirmed that they have the capacity to meet these obligations. However, they will be required to focus on this specialist role more, and reduce support for other Trading Standards

Service activities. Overall therefore there is a slight reduction in capacity within Oxfordshire Trading Standards Service as a consequence. However, the fee received from Buckinghamshire Trading Standards will contribute to the Service's efficiency savings plan and protect the service from additional staffing reductions that would otherwise be required to meet the efficiency targets.

Benefits

9. In undertaking these responsibilities for Buckinghamshire, Oxfordshire Trading Standards will be able to maintain a high degree of expertise and competence in this enforcement function. In addition, a common approach will be developed across the two counties. This will be of benefit to Oxfordshire residents and businesses.
10. The exact terms of the agreement are yet to be finalised. The Cabinet Member for Safer and Stronger Communities is asked to approve Oxfordshire Trading Standards entering into an agreement to carry out licensing and inspection functions relating to petroleum spirit and explosives in Buckinghamshire on the general principles stated above.

Financial and Staff Implications

11. It is anticipated that providing this service will realise an income for Oxfordshire Trading Standards in the region of £25,000 per annum gross.

Risk

12. In order to mitigate the financial risks associated with a project to deliver services to an external body (Buckinghamshire County Council), the agreement will allow for either local authority to withdraw from the agreement with a specified period of notice.

RECOMMENDATION

13. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to authorise the Head of Trading Standards and Community Safety to enter into an agreement with Buckinghamshire County Council to provide licensing and inspection services for petroleum spirit and explosives subject to satisfactory terms being negotiated with Buckinghamshire County Council.**

JOHN PARRY
Director for Community Safety & Shared Services

Background papers: N/A

Contact Officer: Richard Webb, Deputy Head of Trading Standards and Community Safety

April 2010

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Division(s): N/A

CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES – 10 MAY 2010

REQUEST FOR AN EXEMPTION FROM THE TENDERING REQUIREMENTS UNDER THE CONTRACT PROCEDURE RULES IN RESPECT TO PERSONAL PROTECTIVE EQUIPMENT (PPE) FOR THE FIRE & RESCUE SERVICE

**Report by Director for Community Safety & Shared Services and
Chief Fire Officer**

Purpose of the Report

1. This report requests an exemption from the tendering requirements in the Contract Procedure Rules. Specifically, this relates to the proposed extension of an existing contract beyond its current contract term.

Reason why the Annex is Exempt

2. The public should be excluded during consideration of the annex to this report because discussion of it in public would be likely to lead to the disclosure to members of the public present of information in the following categories as prescribed by Part 1 of Schedule 12A to the Local Government Act 1972 (as amended):
 3. *Information relating to the financial and business affairs of any particular person including the authority withholding that information*

and since it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that such disclosure might prejudice the commercial position of Lion Apparel Ltd.

Background

3. In 2001 a contract was let for the provision of personal protective equipment (PPE) for firefighters within Oxfordshire Fire and Rescue Service (OFRS). This contract was for 7 years and was due to terminate on 31 August 2008.
4. In 2005, in order to deliver Fire & Rescue Service (FRS) procurement at a national level, the Secretary of State established a national body – Firebuy Ltd – to drive the National Procurement Strategy forward. Firebuy then initiated the Integrated Clothing Project (ICP). This was intended to create a national identity for firefighters and a contract that would provide significant efficiency savings and quality service for all FRAs.

5. The preferred bidder for the Firebuy contract was announced in March 2007, but due to legal challenge the contract was not available until May 2008.
6. Following evaluation of the ICP contract OFRS decided, along with all other South East region FRSs, that the ICP contract could not meet the Service's needs.
7. Within the OFRS existing contract with Lion Apparel Ltd there was an option to extend for 2 years and an extension for 6 months was felt appropriate in August 2008 to February 2009. A further 18 months' extension was taken on 1 March 2009 to 31 August 2010.
8. OFRS along with the South East region had intended to "call off" under the Yorkshire Purchasing Organisation (YPO) Framework agreement due to be awarded in February 2009. However, nearing the time to call off, OFRS & Kent F&R legal departments identified that the framework would contravene contract rules if we were to call off for longer than 4 years. For financial reasons it was considered essential that the contract duration was longer than this period.
9. In June 2009 Kent Fire & Rescue on behalf of the South East sought exemption from the mandatory use of the Firebuy ICP contract through a business case submitted to Communities and Local Government (CLG). Subsequently, this was approved by CLG allowing the creation of a regional procurement approach.

Current Position

10. The potential to use the existing framework agreement through YPO was not suitable because it was a 4 year framework agreement and to make the contract cost efficient across the region, at least a 7 year agreement was needed.
11. This has resulted in a full tender exercise being undertaken as a South East collaboration of 9 Fire and Rescue Services (FRS). Kent Fire and Rescue Service, with procurement advice from Oxfordshire's County Procurement Team (funded via the South East Fire Improvement Partnership), led this procurement exercise. With expressions of interest from other FRSs resulting in 22 Services now intending to make use of the contract, the cost benefits of this collaborative approach are widely acknowledged. Tenders are currently being evaluated and the contract is due to be operational from 12 April 2010. This procurement process is fully compliant with all contract procurement law and is seen as a best practice procurement process.
12. The current OFRS contract extension with Lion Apparel Ltd ends on 31 August 2010. Whilst the official new framework commencement date is April 2010, the lead-in times for the new contract are anticipated to be between 6 and 10 months. In addition to this lead-in period, a full sizing exercise for all of Oxfordshire's operational staff will be required as a prerequisite.

Reason For Requesting An Exemption From Tendering Under The Contract Procedure Rules

13. It was originally anticipated that by the extension of the earlier contract there would be a seamless transition from one contract to the replacement contract ensuring continuity of PPE availability. However, due to the delay in the collaborative tendering process and previous inability to use the Yorkshire Procurement Organisation call off contract, the ability to guarantee continuing provision of PPE is in question. This places an unacceptable level of risk on the operational effectiveness of the service should there be any delay in either the letting of the contract or the implementation of it.
14. On a contingency basis, it is considered necessary to identify options to minimise this risk.

Options

Option 1:

- Let the existing contract run to the end of August 2010 and move to the new contract from then;
- **Risks** – If the existing provider does not win the new contract (as has subsequently occurred), there may be difficulties during the exit period or if the contract expires before the new one is operational e.g. kit not maintained, new kit not provided, old kit recalled from present provider at the end of the lease period;
- **Benefits** – The benefits would be a continuous service moving from one contract to another and the earliest provision of the newer PPE which has a higher level of protection to wearers;
- **Analysis** – The risk of the new contract not being operational from August 2010 is too great for this option to be taken forward independently. There needs to be a contingency in place to provide business continuity.

Option 2:

- Agree a short-term transitional arrangement with the new contract provider to ensure some aspects of PPE are provided before a full roll out;
- **Risks** – Significant logistic issues e.g. the sizing/measuring process, inability to ensure compatibility between differing items of PPE, reliance on current contractor goodwill and the difficulty in agreeing contract terms for the short-term period;

- **Analysis** – The focus for the new contract will be on roll out within that contract. Although the new provider will be keen to develop the relationship, they may not have the capacity to run a transitional contract in parallel. This option would also not be feasible if there was a delay in the contract award. In that situation, there would be no legal basis for a short-term contract.

Option 3:

- **Extend** the existing contract with the existing supplier for a defined period which, whilst sufficient to ensure continuity of PPE provision and seamless transfer to the new supplier, is for as short a period as possible. It is intended that this would be for a 6 month period with an option for a further extension for a further 3 months.
- **Risks** – Continued use of ageing PPE which, whilst compliant and serviceable, has a lower level of protection available to wearers than that provided by the new PPE. There is some potential for challenge from competitors.
- **Benefits** – Continuity of service – Essential PPE is provided enabling firefighters in OFRS to remain operational and deliver an essential service to citizens. Ability to undertake a detailed and more effective sizing and measuring process to reduce implementation difficulties as the PPE is deployed.
- **Analysis** – Whilst there are some risks to this option, they are far outweighed by the benefits. The PPE provider is already operational and working effectively. Kit is provided and maintained and is still fit for purpose. The potential for external challenge is considered minimal as all potential suppliers have been party to the larger contract process and recognise the need for contingency provisions of this nature.

Implications

15. The Contract Procedure Rules cannot be followed for option 2 as there is not sufficient time between contract award and the termination of the existing contract to allow for a parallel transitional contract, which would still require a lead-in time, sizing exercise and willingness from, as at yet, an unknown winning contractor.
16. The Contract Procedure Rules cannot be followed for option 3 as there is insufficient time to undertake a new tendering exercise or a replacement short-term contract. In addition, any other supplier can be reasonably expected to incur significant costs in setting-up a short-term contract that would result in very high contract charges which would have to be passed on to OFRS as part of the lease costs.

Probity and Value for Money

17. The current PPE provider has informally identified that continuation of the current contract is possible on the basis of the current financial contract. The figure can be compared to the values within the current tender responses. On this basis, the continuation of the current arrangements identifies a potential saving and therefore the extension of the current contract will reduce overall costs.

Consequences If The Proposed Action Is Not Approved

18. The consequences of not having a contingency in place to ensure seamless transition to the new contract are; a potential inability to provide an effective Fire and Rescue Service and a failure to meet the statutory duties of the Fire Authority under the Fire and Rescue Service Act 2004.

Future Procurement Strategy

19. As stated above, the replacement PPE contract is fully compliant with all procurement contract rules.

Financial Appraisal

20. The Finance Business Partner has identified the following from his financial appraisal:

Option 1: This presents no financial risk.

Option 2: There will almost certainly be a significant short-term additional cost to Oxfordshire Fire & Rescue Service, which is not quantifiable at this time.

Option 3: As a contract extension is likely to be agreed at the current price, there should be no financial risk to the Authority.

21. The Finance Business Partner recommends the granting of the exemption.

Legal Appraisal

22. See separately attached Legal Appraisal (Refer Annex 1).

Equality and Diversity, Health & Safety

23. OFRS have considered if any specific health and safety (H&S), equality and diversity (E&D) or environmental implications arise from this report. Current PPE meets all appropriate H&S and E&D requirements and will be disposed of under a methodology which supports the Authority's environmental requirements. The replacement PPE contract has been tendered with specific requirements relating to health and safety, equality and diversity and its environmental implications. In all areas these are to a higher standard than the current PPE. As a consequence and with recognition that the contract

exemption is sought on either a short term or contingency basis, the Service is satisfied that there are no implications that will arise from this decision.

RECOMMENDATION

24. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve an exemption from the tendering requirements of Oxfordshire County Council's Contract Procedure Rules and to:**
- (a) *approve an extension to the existing contract with Lion Apparel Ltd for a period of 6 months, with an option to withdraw sooner if that is feasible;***
 - (b) *delegate authority to the Director for Community Safety and Shared Services and Chief Fire Officer to extend the contract for a further 3 months should the new contract not be operational in sufficient time to allow for a seamless transition.***

JOHN PARRY

Director for Community Safety & Shared Services and Chief Fire Officer

Background Papers: Nil

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April 2010

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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