

EAST AYRSHIRE COUNCIL

CABINET – 1ST OCTOBER 2008

**INTEGRATED SERVICE DELIVERY AND GOVERNANCE MODELLING
PROJECT**

**TRADING STANDARDS SERVICES JOINT WARRANT OF AUTHORITY
ACROSS AYRSHIRE**

Report by Head of Legal, Procurement & Regulatory Services

1. PURPOSE OF REPORT

- 1.1 To advise the Cabinet of progress in developing a joint warrant of authority to grant powers to trading standards officers from the three Ayrshire authorities to enforce trading standards legislation within their partner authorities in accordance with an agreed protocol/memorandum of understanding and to seek Cabinet policy approval for such an agreement.

2. BACKGROUND

- 2.1 One of the specific tasks identified for trading standards as part of the integrated service delivery and governance modelling project was to produce a joint warrant of authority which would complement warrants of authority for duly authorised officers to exercise their powers within the boundaries of and employing authority by extending such authorisation to cover the other two Ayrshire authorities.

3. DISCUSSION

- 3.1 The three trading standards managers have identified that there are potential advantages in having trading standards enforcement staff authorised to operate throughout Ayrshire. An example would be where counterfeit goods on sale at a market stall in one authority are identified as having been produced in adjacent authority and any investigation should be carried out on a "hot pursuit" basis. Another example would be where a major operation required assistance from neighbouring authorities as envisaged in the animal health disease contingency plans. It should be recognised that the protocol / memorandum of understanding envisages exercise of any such powers to be in exceptional circumstances.
- 3.2 The trading standards managers agreed the wording of a draft protocol/memorandum of understanding and (copy attached) and East and North Ayrshire are content with the overall layout of the joint warrant of authority (copy attached). South Ayrshire simply wishes to incorporate the

wording of page three of the draft warrant into their current authorisation documentation.

- 3.3 The wording of the joint warrant of authority and the associated draft protocol/memorandum of understanding will required to be ratified by each of the three authorities. As East Ayrshire is taking the lead in this project details are being submitted for East Ayrshire Council Cabinet approval, and if so approved, will be submitted for ratification by the partner authorities.

4. POLICY IMPLICATIONS

- 4.1 The proposals are in line with the concept of an integrated service delivery and governance model as agreed by the three Ayrshire authorities.

5. LEGAL IMPLICATIONS

- 5.1 The proposals are in accordance with the statutory responsibilities and powers of each of the three authorities.

6. FINANCIAL IMPLICATIONS

- 6.1 Nil

7. CONCLUSIONS

- 7.1 The three trading standards managers within Ayrshire have agreed that there are operational advantages in permitting officers from partner authorities to be empowered to enforce trading standards legislation throughout Ayrshire in accordance with an agreed protocol/memorandum of understanding.

8. RECOMMENDATIONS

It is recommended that;

- (i) Cabinet approve the proposed joint authorisation agreements for Trading Standards enforcement officers across the geographical area covered by the three Ayrshire authorities.

David Mitchell
Head of Legal, Procurement and Regulatory Services

DM/JD/JM

24 September 2008

LIST OF BACKGROUND PAPERS

Protocol/Memorandum of Understanding
Sample Joint Warrant of Authority

Implementation officer – david.mitchell@east-ayrshire.gov.uk

**Integrated Service Delivery
And
Governance Modelling Project**

Trading Standards Across Ayrshire

Joint Authorisation Within Ayrshire

Draft Protocol / Memorandum of Understanding

1. Routine Inspection

1.1 Routine inspection, by its very nature, is a planned, programmed visit which is likely to be date sensitive and therefore it is generally accepted that it is not a topic which would involve cross-boundary working.

1.2 However, exceptional circumstances may exist where an Officer will have to exercise powers in a neighbouring authority. For example, an officer following a coal merchant with a view to carrying out an inspection may find that the trader, in the course of his business, crosses the boundary into a neighbouring authority. Under such circumstances, it would be appropriate for the officer to do likewise and exercise his/her authority in that authority's area. Similarly, a mobile trader such as an ice cream vendor suspected of selling illegal video's, again crossing into another authority. Again, it would be advantageous if the investigating officer could follow the trader into the neighbouring authority and continue the investigation.

1.3 In situations where cross boundary inspection occurs and prior notice or consent is not practical, the investigating officer should inform the partner authority as soon as possible.

'Partner authority' within this Memorandum of Understanding means East, North and South Ayrshire Council respectively.

2. Investigations

2.1 If a cross-boundary visit is necessary during the course of an investigation, the investigating officer should as a matter of courtesy, inform the home authority prior to any visit and keep the authority informed of progress made in the investigation.

3. Joint Projects

- 3.1 Joint projects are most likely to involve cross-boundary work. This may include sampling, trader visits and various other types of investigation and may also include surveillance work.
- 3.2 Each joint project will generate its own working protocol which must clearly outline what is expected of all officers involved.

4. Issue of Notices – Suspension, Improvement and Prohibition

- 4.1 The issue of any of the above notices is seen as a Home Authority role and it is unlikely that there would be any exceptions to the rule.

5. Connected Offences

- 5.1 A situation may arise where an investigating officer is dealing with two connected offences, in different authorities.
- 5.2 In such circumstances the officer/line manager should assess the investigation. The gravity and numeracy of offences will dictate which PF should receive the case, notwithstanding that Fiscals may agree to transfer jurisdiction.

6. Regulation of Investigatory Powers (Scotland) Act 2000

- 6.1 Each partner authority should authorise covert activities in line with their own Council procedures.
- 6.2 Where an investigation or operation involves activity within another partner authority then the partner authority should be consulted in advance of any authorisation being granted. The authority leading the investigation or operation is responsible for ensuring compliance with all Regulation of Investigatory Powers (Scotland) Act 2000 requirements.

7 Professional Liability

- 7.1 Each authority will indemnify the other two authorities against costs arising from allegations from improper/unauthorised actions by their officers' e.g. incorrect seizure of goods. Normally any such costs would be borne by the authority employing the senior officer who instigated such action but on occasions such costs would be shared on an *ad hoc* agreed basis.

8 Health and Safety Liability

- 8.1** Each authority will be responsible for costs arising from alleged breaches of health and safety legislation or other legislation incurring liability for public employees, arising out of the conduct of their officers operating in any of the Ayrshire authorities.

9. Insurance Liability

- 9.1** Each authority will be responsible for costs, in respect of activities conducted by their officers operating in any of the three Ayrshire authorities, arising from;

- Public liability claims
- Third party insurance claims
- Personal injury claims



Department of Corporate Support
East Ayrshire Council

Officer : **Joseph Donnelly**

Designation : **Principal Officer (Trading Standards)**

Expiry Date: **31st March 2010**

Signature:

I certify that **JOSEPH DONNELLY** has been appointed and authorised by East Ayrshire Council to exercise the powers conferred upon a duly authorised officer or inspector of this Authority to enter and inspect premises, make test purchases, issue improvement notices or prohibition notices and seize goods, articles, books and documents as appropriate under any legislation listed at Appendix 1 and any Orders, Rules, Regulations or Statutory Instruments made thereunder.

Signed:

Depute Chief Executive for East Ayrshire Council Date 31/03/07

We, the undersigned hereby certify that **Joseph Donnelly**, a Trading Standards Officer employed by East Ayrshire Council is authorised to exercise the powers and execute the duties appropriate to that office, including powers of entry, inspection, search and seizure of documents and goods, within the boundaries of North and South Ayrshire.

Signed:

Date:


Assistant Chief Executive for North Ayrshire Council

Signed:

Date:

Depute Chief Executive for South Ayrshire Council

- APPENDIX 1**
Enactments conferring Statutory Powers upon JOSEPH DONNELLY include:
- Agriculture Act 1970
 - Animal Health Act 1981
 - Animal Health and Welfare (Scotland) Act 2006
 - Consumer Credit Act 1974 & 2006
 - Consumer Protection Act 1987
 - Construction Products Regulations 1991
 - Copyright Designs and Patents Act 1988
 - European Communities Act 1972
 - Energy Information Regulations 1994-2004
 - Enterprise Act 2002
 - Electromagnetic Compatibility Regulations 2005
 - Fireworks Act 2003
 - Fair Trading Act 1973
 - General Product Safety Regulations 2005
 - Hallmarking Act 1973
 - Health and Safety at Work etc. Act 1974
 - Motor Cycle Noise Act 1987
 - Packaged Goods Regulations 2006
 - Prices Act 1974 & 1975
 - Poisons Act 1972
 - Trade Descriptions Act 1968
 - Trade Marks Act 1994
 - Tobacco Advertising and Promotion Act 2002
 - Textile Products regulations 1986
 - Video Recordings Act 1984
 - Weights & Measures Act 1985



TRADING STANDARDS

WARRANT OF AUTHORITY