

Appendices: 1



NORTHAMPTON
BOROUGH COUNCIL

COUNCIL

18th July 2016

Agenda Status: Public

**Directorate: Customers &
Communities**

Report Title	Appointment of Health and Safety Inspectors – The Health and Safety at Work etc. Act 1974
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1. Purpose

- 1.1 The purpose of this report is to appoint officers of the Council as Health and Safety Inspectors under the Health and Safety at Work etc. Act 1974 (the '1974 Act').

2. Recommendations

Full Council is recommended to:

- 2.1.1 Designate the following officer posts of Northampton Borough Council as Inspectors under Section 19 of the 1974 Act on the terms set out in Appendix 1:

- *Environmental Health and Licensing Manager*
- *Senior Environmental Health Officer*
- *Health and Safety Officer*
- *Senior Food & Safety Officer*

and to delegate authority to the Director of Customers and Communities to sign the written instruments appointing individual Inspectors.

- 2.1.2 Approve as a Council policy, the indemnification by the Council, of Health and Safety Inspectors appointed by the Council under the 1974 Act in circumstances where an action is brought against an Inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions, against the whole or part of any damages and costs or expenses which the Inspector may have been ordered to pay or may have

incurred, in cases where the Council is satisfied that the Inspector honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it, providing the Inspector was not wilfully acting against instructions.

3. Issues and Choices

3.1 Report Background

3.1.1 Regulatory Services Officers from within the Customers and Communities Directorate are responsible for enforcement of a multitude of legislation and have a wide remit of public protection responsibilities.

3.1.2 Recent and ongoing resource challenges have led to restructuring within the Customer and Communities division. Where change takes place it is important to ensure that officers charged with an enforcement responsibility remain duly authorised. The recommendations in this report have therefore been put forward as part of a general review of officer powers and authorisations within the Customers and Communities Directorate.

3.1.3 It is important that competent Officers are properly authorised to undertake the various functions prescribed by a particular piece of legislation. It is also vital that officers are empowered, where applicable, to enter and inspect premises.

3.1.4 To meet its duty under the 1974 Act, the Council as an enforcing authority must make adequate arrangements for enforcement within its area, of the relevant statutory provisions to the extent that it is responsible for their enforcement.

3.1.5 Section 19 of the 1974 Act states:

- (1) *Every enforcing authority may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this section.*
- (2) *Every appointment of a person as an inspector under this section shall be made by an instrument in writing specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this section—*
 - (a) *be entitled to exercise only such of those powers as are so specified; and*
 - (b) *be entitled to exercise the powers so specified only within the field of responsibility of the authority which appointed him.*
- (3) *So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority which appointed him.*
- (4) *An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his instrument of appointment or a duly authenticated copy thereof.*

3.1.6 The effect of section 19 is that the Council's Health and Safety Inspectors must be specifically appointed to enable them to carry out their enforcement duties and their appointment must set out which powers they may exercise.

The Council's Inspectors must be able to produce their instrument of appointment, when exercising their powers. In practice, Inspectors will carry an authorisation warrant card, which will specify the powers conferred on them. In order for the Council's health and safety enforcement functions to be carried out legally and in a robust manner, the Council needs to ensure that suitably qualified officers are appointed as Inspectors and that authorisation warrant cards are up to date.

3.2 Decision details

3.2.1 Council is recommended to designate the following Officer posts of Northampton Borough Council as Inspectors under Section 19 of the 1974 Act on the terms set out in Appendix 1 and to delegate authority to the Director of Customers and Communities to sign the written instruments appointing individual Inspectors:

- *Environmental Health and Licensing Manager*
- *Senior Environmental Health Officer*
- *Health and Safety Officer*
- *Senior Food & Safety Officer*

In effect, this will renew the appointment of Officers who have been previously appointed, appoint new Officers as Health and Safety Inspectors and ensure consistency in the form of these appointments.

3.2.2 The powers that would be conferred on an Inspector through this appointment, would permit them to deal with health and safety failings that may be encountered during routine complaint investigations or inspection work. This may involve service of a prohibition notice for imminent and severe issues or an improvement notice for less serious matters still requiring action. The powers conferred will also enable Inspectors to act in accordance with section 20 of the 1974 Act, (for example to exercise powers of entry, inspection and investigation) and to exercise powers conferred on Inspectors by Regulations made under the 1974 Act.

3.2.3 It is considered that the Officers holding the Officer posts recommended for appointment as Inspectors will have the relevant knowledge, experience and qualifications to effectively discharge the duties of a Northampton Borough Council Health and Safety Inspector. Appointment will be based on guidance issued by the Health and Safety Executive in Local Authority Circular number 22/8 (*'Guidance on the appointment of Local Authority Inspectors to enforce the Health and Safety at Work etc. Act 1974'*), requiring suitable management arrangements to be in place. Management arrangements will require Officers to have suitable qualifications, satisfy a competency framework, and demonstrate competence before executing powers under the 1974 Act.

3.2.4 Management arrangements will ensure certain criteria are met before a health and safety inspector is appointed. These criteria include a suitable health and safety qualification, equal to Level 3, as a minimum. A competency framework will need to be filled out to prove an officer has the technical knowledge and experience necessary for specific topic areas (as listed in the Regulatory Development Needs Assessment – RDNA). Officers then need to demonstrate

this knowledge and experience. This competency framework is an integral part of the assessment criteria.

3.2.5 Full Council is asked to approve as a policy the indemnification by the Council, of Health and Safety Inspectors appointed by the Council under the 1974 Act in circumstances where:

- an action is brought against an Inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions,

against the whole or part of any damages and costs or expenses which the Inspector may have been ordered to pay or may have incurred, in cases where the Council is satisfied that the Inspector honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it, providing the Inspector was not wilfully acting against instructions. The Health and Safety Executive guidance recommends that every local authority issue a statement along these lines explaining that it is the policy of the authority to indemnify inspectors in these circumstances.

3.2.6 Situations could arise when an action is brought against a Health and Safety Inspector arising out of their Inspector's duties. Section 26 of the 1974 Act therefore allows local authorities to indemnify a Health and Safety Inspector provided they are satisfied the act complained of was honestly believed to be within the powers of the Inspector and their duty as an Inspector required or entitled them to do it. If Full Council approve the recommendation at paragraph 2.1.2, the power to indemnify will be used when it becomes operative (ie. when an action is brought against an inspector and the Inspector is not legally entitled to require the Council to indemnify him/her).

4. Implications (including financial implications)

4.1 Policy

4.1.1 None

4.2 Resources and Risk

4.2.1 The purpose of this report is to appoint Health and Safety Inspectors. No additional resource is required to facilitate this.

4.2.2 Where a local authority has not authorised Inspectors, it cannot intervene in matters where there is or have been significant health and safety failings. This may include dealing with complaints from members of the public, accident investigations or dangerous occurrences. Not having adequate arrangements in place to deal with health and safety matters within its remit could adversely affect the reputation of Northampton Borough Council and result in complaints being made to the Local Government Ombudsman.

4.3 Legal

4.3.1 Where Northampton Borough Council has not made adequate arrangements for enforcement of inspectors it would not be compliant with its duty under Section 18 of the 1974 Act that makes it a duty of every local authority to make adequate arrangements for the enforcement within their area of the statutory provisions that they are responsible for enforcing. Appointment of Health and Safety inspectors is a necessary part of ensuring compliance with this duty.

4.4 Equality

4.4.1 The basic foundation of health and safety law is to promote the health, safety and welfare of persons at work. Where the Council has no appointed Inspectors it would be unable to promote equality (workplace welfare provisions) and health in light of any complaints, incidents or accidents.

4.5 Other Implications

4.5.1 None.

5. Background Papers

5.1 None

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