

CHESHIRE FIRE AUTHORITY

MEETING OF : CHESHIRE FIRE AUTHORITY
DATE : 21st September 2016
REPORT OF : HEAD OF PROTECTION
AUTHOR : JAMES WILLMOTT

SUBJECT : PROPOSAL FOR PARTNERSHIP UNDER PRIMARY
AUTHORITY SCHEME WITH CERTAS ENERGY UK
LIMITED

Purpose of Report

1. To inform Members about a proposal to enter into a partnership under the Primary Authority Scheme (PAS).
2. To seek approval to apply to the Secretary of State to become a Primary Authority (PA) in relation to Certas Energy UK Limited.

Recommended that Members authorise officers to:

- [1] seek nomination from the Secretary of State as required by the Primary Authority Scheme; and
- [2] enter into a partnership with Certas Energy UK Limited subject to the agreement of satisfactory terms and conditions.

Background

3. The PAS allows a business to partner with a single authority from which it can seek assured advice and guidance on compliance with legislation.
4. The PAS is described under Section 25 of the Regulatory Enforcement and Sanctions Act 2008. The Act allows the Secretary of State to nominate partnerships under the PAS between a business and a local authority, provided that the business carries out its activity within two or more local authority areas and the local authorities have responsibility for enforcement of the same relevant function, e.g. fire safety. The local authority and the business must agree the terms of the partnership.
5. The PAS is designed to promote a single approach to compliance for businesses as well as enforcing authorities. It is also the intention of the PAS to reduce the regulatory burdens on businesses. It does not prevent enforcement action or prosecution under relevant legislation, but can provide a business with assurance that the approach it has taken to comply with its obligations should be compliant.

6. The Fire Authority considered a report about PAS in February 2014. Members noted the information about PAS and the implications for the Service. Members authorised officers to pursue partnerships 'in circumstances where a satisfactory assessment of the impact upon the other work of the Service had been completed'.
7. A PAS partnership was entered into by the Authority with Hydes' Brewery Limited in 2015. It has been successfully operating since then.

Discussions with Certas Energy UK Limited

8. The Service was first approached by Certas Energy in January 2016 with a view to setting up a partnership under the scheme. The company is one of the biggest independent fuel and lubricant distributors in the UK with approximately 150 depots across England and Wales, and was keen to partner with the Service as its head office is located in Cheshire. Certas Energy has already established successful partnerships under the PAS with Warrington Borough Council relating to trading standards, petroleum licensing and environmental health.
9. An initial meeting took place on 14th April 2016 between senior health and safety managers from Certas Energy and managers from the Service's Protection team. A further meeting took place in June during which the terms and requirements of a potential partnership were discussed.
10. Certas Energy requires specific technical expertise in relation to its storage and handling of dangerous substances which the Service is not in a position to provide. The Service, as a combined Fire Authority does not undertake petroleum licensing inspections and thus inspecting officers are not familiar with the associated technical standards for these types of premises.
11. Nationally there is and has been considerable debate about enforcing the Fire Safety Order in certain types of premises where both the Fire Authority and the Health and Safety Executive both have jurisdiction. This has led to uncertainty in relation to the enforcement of the Order insofar as dangerous substances are concerned. Accordingly, close liaison with the HSE will be required if the Service enters into this partnership. Further specific training will also be required for officers involved in managing the partnership-related work in relation to the dangerous substances present at Certas Energy premises.
12. The option of stipulating that dangerous substances would not form part of the partnership in the Primary Authority memorandum of understanding and summary arrangements was discussed with the Regulatory Delivery Office and is not an option.
13. Additionally, as with all PAS arrangements the Service will be required to liaise with all other enforcing authorities. It is impossible to quantify the time commitment that this might involve, because this will be entirely dependent on enforcing authorities' involvement with the business which cannot be predicted. It should however be noted that, to date, interactions

between Certas Energy and enforcement authorities in relation to compliance with the Fire Safety Order have not resulted in enforcement action. Therefore, provided the legislative provision and regulatory requirements do not alter it seems reasonable to assume that the Service will be able to cope with the demands of the partnership.

Next Steps

14. Ordinarily, the next step in the process to establish the partnership would be for the Authority to submit an application for its nomination to the Secretary of State as required by the PAS.
15. If the Service wishes to pursue nomination then a short embedding period will ensue with the Protection team working closely with Certas Energy representatives to gain a good understanding of the business and the way in which it operates. This will involve a review of its systems and practices in relation to compliance with fire safety legislation.
16. Once a scheme has been nominated by the Secretary of State it becomes bound by the Primary Authority terms and conditions and only the Secretary of State can dissolve the partnership. The Service must be satisfied that it can devote appropriate resources and technical expertise to the partnership for its lifetime; failure to do so could provide sufficient grounds to dissolve the partnership and would cause reputational damage to the Service.
17. Certas Energy has requested that the Service commit to two hundred hours of work in the first year of the partnership. Following discussions with Certas Energy, the Service has provisionally assigned two protection officers (including a qualified fire engineer) to the partnership should Members approve the nomination. Resources and the time required to manage the partnership will be reviewed after the first year. Additionally, officers assigned to the partnership will undertake further training in dangerous substances regulations to address any gaps in knowledge and any further training needs will be reviewed on an ongoing basis.

Financial implications

18. One of the key fundamentals of the scheme is that the local authority may recover costs associated with running the partnership. Full costs recovery has been agreed at a starting rate of £60 per hour. This will be subject to and detailed in the formal PAS agreement. Further negotiations as to chargeable activity have yet to take place but it is anticipated that these would include:
 - establishing partnership arrangements.
 - familiarising Service staff with the business and its policies and procedures.
 - developing, providing and reviewing advice in terms of general fire safety and the Regulatory Reform (Fire Safety) Order 2005.
 - developing, managing and evaluating an inspection plan for enforcing authorities to follow during inspections.

- responding to queries from enforcing authorities.
- collating and analysing data.
- training staff.
- conducting audits and compliance checks.

19. Close monitoring and review of the arrangements will be undertaken to safeguard against the misuse of the scheme by a business to dilute or avoid compliance. The Service will evaluate the effectiveness and value of the arrangement on a regular basis.

Legal implications

20. The terms as set out in the statutory guidance for PAS dictates that the Authority, if proved negligent in any way, will only be liable for the maximum amount of money it has been paid by the partner in cost recovery in any one year. Liability could arise from the provision of incorrect advice which when followed by the business resulted in a breach of the legislation resulting in enforcement action by an enforcing authority.

Equality and Diversity implications

21. There are no equality and diversity implications arising from this paper

Environmental implications

22. There are no environmental implications arising from this paper.

BACKGROUND PAPERS: NONE