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Our Ref: FSE 6/2/15

21 September 2006

Dear Consultee

Limited Consultation Exercise on Extension to Charging Order by Fire and Rescue Authorities

I am writing to you to seek your views on whether the Department for Communities and Local Government (DCLG) should extend the current charging regime set out in the Fire and Rescue Services (England) Order 2004¹ (the Charging Order).

1.1 Purpose of consultation

- 1.1.1 This consultation is published as a limited consultation to gauge the degree of interest in extending the charging regime before committing considerable time and resources that a full consultation will require. We are asking for your opinion on extending the charging regime and your inclination about undertaking further research for this.
- 1.1.2 This consultation does NOT seek to review any of the existing categories already listed. It does NOT cover the matters set out in the Schedule to the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004² (the Trading Order).
- 1.1.3 If there is an overwhelming response that extension is required then a full consultation under the Cabinet Office Code of Practice³ will be undertaken. The limited consultation applies best practice from the code.
- 1.1.4 This document has been sent to those stakeholders who have been listed at Annex A. This does not prevent the document being passed on to others for comment and response.
- 1.1.5 We welcome responses to the specific questions posed in this document and any other general comments that you may have. Please ensure that responses to any of the specific questions posed clearly identify the question number to assist with the compilation and analysis of responses. It would also be helpful if responses were submitted electronically.

¹ S.I. 2004/2305.

² S.I. 2004/1705.2307 & S.I. 2004/2573.

³ <http://www.cabinetoffice.gov.uk/regulation/consultation/>

This will considerably reduce the time needed to compile and analyse the comments received.

- 1.1.6 Responses and comments, to be received by mid-day on 10 Jan 2007, should be sent to:

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1.2 After the consultation period

- 1.2.1 Within 3 months after 10 Jan 2007, we will analyse the responses to the consultation and produce a feedback document which summarises the:
- received responses and comments
 - actions to be taken following consultation
- 1.2.2 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 1.2.3 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.2.4 The Department will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

2.1 Background on charging powers

- 2.1.1 Fire & Rescue Authorities (FRAs) had a power under section 3(1)(e) of the Fire Services Act 1947 to charge for the provision of services other than fire-fighting services. In 2003, section 3 was amended by the Marine Safety Act 2003, to allow fire authorities to recover the costs of fire-fighting at sea. The 1947 Act was repealed by the Fire and Rescue Services Act 2004 (the 2004 Act).

- 2.1.1 Section 19 of the 2004 Act re-enacts the power to charge but prohibits any charge being made for extinguishing fires, protecting life and property in the event of a fire and providing emergency medical assistance.
- 2.1.2 Beyond this, the power to charge, up to full cost recovery, is circumscribed by the requirement for the category of service to have been specified by the Secretary of State in a statutory instrument (i.e. the Charging Order). The Order must also provide for a description of the categories of person in respect of whom a charge may be made for the provision of a specified service.
- 2.1.3 The Charging Order came into effect on 1st October 2004⁴. It does not lay down a scale of charges nor lay down the circumstances in which an authority should charge or not charge for a particular service. These aspects are still for each FRA to decide.
- 2.1.4 In 2003 the Select Committee on the Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions in their Third Report⁵ recommended that more research should be conducted on the potential for Fire Authorities to charge for their activities. It recommended that the Department undertake consultation to explore charging for certain activities of FRAs, including advice on risk assessed fire safety. Ministers have made a commitment to consult in relation to charging for road traffic collisions and repeat false alarms.
- 2.1.5 The Government's response to the Select Committee⁶, on the question of risk assessed fire safety, noted that the ODPM were already undertaking a consultation⁷ on categories to be included in the first order and that charging for the giving advice was going to be covered in that.
- 2.1.6 The response also recognised 'the difficulty in drawing a distinction between the general safety advice that authorities must provide and detailed consultancy. We are also aware that several authorities are keen to be able to market their expertise in this field and to do more than simply recover their costs'.
- 2.1.7 The 2004 consultation specifically looked at 'How might a distinction be drawn between the provision of free advice on fire safety arrangements and the chargeable provision of detailed advice or consultancy in respect of major projects? Is it appropriate or desirable that any such distinction should be drawn? How might the authority mitigate any apparent conflict of interest between providing chargeable advice and its enforcement role?'
- 2.1.8 There was no consensus in the responses to these questions with suggestions ranging from making the level of advice, time taken, resources used as a basis for charging to the suggestion that enforcement should not be carried out in the same area and/or premises as where advice was given.
- 2.1.9 The category of 'The giving of advice to persons in relation to premises where a trade, business or other undertaking is carried on, other than the giving of advice for which arrangements are required to be made under section 6(2)(b) of the Act' was included in the charging order and it is up to FRAs to manage any potential conflict arising from giving

⁴ <http://www.opsi.gov.uk/si/si2004/20042305.htm>

⁵ <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmmodpm/43/4309.htm>

⁶ www.communities.gov.uk/embedded_object.asp?id=1123920

⁷ <http://www.communities.gov.uk/index.asp?id=1125697>

advice and acting as enforcing authority. A number have already put steps into practice to manage this. There are no proposals to amend this category.

2.1.10 Subsequent stakeholder correspondence has also raised the issue of whether charging for attending dangerous sports incidents could also be included as a category in any future extension.

2.2 Review of existing practices

2.2.1 From April to June 2006 the Chief Fire Officers' Association (CFOA) carried out a review of current charging and trading practices by English FRAs and asked for details about the benefits and disbenefits of charging. FRAs were asked to consider what services they would like added to the charging order and why.

2.2.2 23 responses were received from English FRAs (48%). Some of the benefits of charging listed were felt to be: -

- the limiting of demand on the service by deterring those who would otherwise seek free non-emergency response from an FRA;
- raising income to bolster "budgets that are constantly under pressure";
- to support public safety initiatives that otherwise could not be funded; and
- that those who cause the problem should be liable for costs arising from the solution.

2.2.3 Some of the disbenefits of charging were felt to be:-

- dilution of the FRS's image as a provider of a free service would alienate the public from the service;
- high costs of administration; and
- the possibility of deterring genuine callers.

2.2.4 Other categories that FRAs suggested could be included in the charging order were:

- non-emergency calls;
- issuing an Unique Recognition Number⁸ for repeated calls from remotely monitored fire alarm systems;
- unsafe practices;
- cleaning up after environmental pollution incidents; and
- chimney fires.

2.3 Research into charging activities by other organisations

2.3.1 From April to June 2006 DCLG contacted various UK organisations, including any that might have similar statutory powers, to find out what they were doing in relation to charging for services or not and what were the benefits/disbenefits of their current systems.

2.3.2 Of the 62 organisations contacted 15 replied (of which 2 were nil returns). From the 13 main responses received, 6 organisations did not charge. One respondent noted that the main benefit of not charging was that services were accessible and there was an

⁸ <http://195.80.32.155/docimages/213.pdf>

expectation that by not charging for their services any reciprocal help and support from other organisations would be received without incurring charges to themselves.

- 2.3.3 Of the 7 organisations that had some form of charging systems it was only the Department of Health that had a charging system in place for Road Traffic Collisions (RTCs). This stated that where an insurer pays personal injury compensation to the victim of a RTC they are also required to contribute towards the costs of any NHS hospital treatment provided to the injured person. The system is operated through Compensation Recovery Unit, relying on detailed powers contained in primary and secondary legislation, which is part of Department for Work and Pensions.
- 2.3.4 The reason for this is that compensators very rarely have to pay the full costs of hospital treatment. The RTC scheme operates a simple tariff system which means, of course, that frequently the amounts recovered do not match exactly the costs of providing treatment in any specific case. It is only secondary (hospital) care costs that can be recovered.
- 2.3.5 One organisation stated that a disbenefit of charging was that there was no clarity on the issue of 'who is responsible' and so Local Authorities try to pay as little as possible, this leads to protracted and often difficult negotiations. The ability to charge for certain services came with a reduction in independence and operational control over activities.

2.4 Guidance

- 2.4.1 Guidance on the charging order has not been published previously. A draft copy is included in Annex B. Comments are sought on this to help inform and update the final document which should be published in 2007.

2.5 Next steps

- 2.5.1 The consultation has been sent to the key stakeholders listed in Annex A. However this does not prevent the document being passed on to others for comment and response. Organisations such as the Business and Community Safety Group and the Chief Fire Officers' Association were consulted in the initial stages of development and their views were sought as part of the background research.
- 2.5.2 This consultation only applies to English FRAs but the devolved authorities are being kept informed of the developments and any comments they wish to add will be considered.
- 2.5.3 There is detailed legislation in place which allows Department of Health to recover some of the costs for Road Traffic Collisions (RTCs). Such detailed legislation does not exist for the Fire & Rescue Service. Further research would be needed to establish proposals on how FRAs would levy charges for RTCs and the appropriate classes of person to be charged.
- 2.5.4 Further research into the costs and benefits of such systems would be needed to be demonstrated and the potential impact on suppliers, especially Small & Medium Sized Enterprises (SMEs) would have to be assessed in order to satisfy the Office of Fair Trading. It may also be necessary to consider suppliers outside the UK.
- 2.5.5 The type of alarm to be covered in any extension on the charging order needs to be defined. The term 'Repeat false alarms' was specifically used by the 2003 Select

Committee and has been used in the initial preparation. False alarms are defined as 'A fire alarm signal resulting from a cause other than fire'⁹.

- 2.5.6 It has become clear from further discussions that other categories of alarms could also be used, such as Unwanted Fire Signals and/or Remotely Monitored Fire Alarm Systems. More research will be needed to clearly define and scope this.
- 2.5.7 It is also clear that further work would be required to define what is a dangerous sport and under what circumstances a charge would be made for attending dangerous sports incidents.
- 2.5.8 We also need to establish whether there are any further categories beyond RTCs, Repeat False Alarms and dangerous sports that may need to be included in any possible extension and what classes of persons would be appropriate to be charged for any new category.
- 2.5.9 We would not wish to commit resources to any of this work without establishing in the first place that there is an overwhelming view that we need to extend the charging powers.
- 2.5.10 This consultation paper therefore invites your views on the level of your interest in extending the charging regime and asks for your inclination about undertaking further research.

Q1. What is your opinion on extending the charging regime at this time?

Q2. What is your inclination about undertaking further research for this?

- 2.5.11 If the responses to this limited consultation demonstrate a positive desire to take this area of work forward then further detailed research will be undertaken. The findings from this will be considered before we undertake a section 19(7) consultation which would include a Regulatory Impact Assessment.
- 2.5.12 Even if the work on extending the charging order was not undertaken at this time it does not prevent these or new issues being raised at a later date.
- 2.5.13 We are also seeking views on whether any additions, deletions or amendments are needed to the draft charging guidance at Annex B. The work to update this document will go ahead in 2007 even if it is decided not to continue with extending the charging regime at this time.

I look forward to receiving your comments

Yours faithfully

Anna Wadsworth

⁹ BS 5839-1: 2002 Fire detection and fire alarm systems for buildings. Code of practice for system design, installation, commissioning and maintenance