



*Adding a specified category to the  
Charging Order Fire and Rescue  
Services Act 2004 Section 19(7)*

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Consultation Findings



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September 2007

Department for Communities and Local Government : London

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 020 7944 4400  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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## 1.1 BACKGROUND

- 1.1.1 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 The 1947 Act was repealed by the Fire and Rescue Services Act 2004 (the 2004 Act).
- 1.1.2 Section 19 of the 2004 Act re-enacted 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.
- 1.1.3 Beyond this, the power to charge, up to full cost recovery, is circumscribed by the requirement for the category of service to be specified by the Secretary of State in a statutory instrument made under section 19(1) (“the Charging Order”). The Charging 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. Section 19(7) requires the Secretary of State to consult any persons she considers appropriate before making a Charging Order.
- 1.1.4 The Charging Order forms part of the Fire and Rescue Services (England) Order 2004, SI 2004/2305, which came into effect on 1 October 2004<sup>1</sup>. 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.
- 1.1.5 In 2003 the Select Committee on the Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions in their Third Report<sup>2</sup> recommended that more research should be conducted on the potential for FRAs to charge for their activities. Ministers made a commitment to consult in relation to charging for any extension including road traffic collisions and repeat false alarms.
- 1.1.6 Subsequent stakeholder correspondence also raised the issue of whether charging for attending dangerous sports incidents could also be included as a category.
- 1.1.7 In the summer of 2006 Communities and Local Government undertook research on the charging policies of similar/related organisations. At the same time the Chief Fire Officers’ Association (CFOA) reviewed existing charging practices by Fire & Rescue Authorities. It was anticipated that both pieces of information would help inform the consultation.
- 1.1.8 However, the limited responses received raised more questions than answers and it was decided that opinions should be sought on whether there was any inclination to extend the charging regime and if further research was needed on this before committing considerable time and resources to the consultation.
- 1.1.9 A limited consultation on a possible extension to the Charging Order by FRAs was issued to over 130 specific stakeholders on 21 September 2006. This looked at three specific areas: road traffic collisions, repeat false alarms and attending dangerous sports incidents and closed on 10 January 2007.

<sup>1</sup> <http://www.opsi.gov.uk/si/si200420042305.htm>

<sup>2</sup> <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmodpm/43/4309.htm>

- 1.1.10 The results of this consultation showed that there was no clear support to extend the charging order for these three categories and that further research would be needed before they could be included.
- 1.1.11 However a category that was not initially considered in the consultation was raised and there was a compelling need to allow FRAs to charge for the provision of administrative, professional or technical services and advice related to the operation of the regional fire control service. The local authority controlled company would be the only body that would be charged for this service.
- 1.1.12 Of the 9 regional control centres (RCCs) created by FiReControl, 8 needed to be established as local authority controlled companies that would manage the RCC on behalf of the FRAs within its region. The exception is London, whose RCC will be managed by the London Fire and Emergency Planning Authority alone. Although these companies would be wholly owned and controlled by the FRAs within their region they will not be public bodies for the purposes of the Local Authorities (Goods and Services) Act 1970 and so the FRAs cannot recover the cost of providing services to the companies. The consequence of this in practice is that FRAs would not automatically be able to provide back office functions to the RCC as they would have done to their current control room or would do to another FRA.
- 1.1.13 These were services which the current control facility had access to while it was cited within the FRA. The services included but were not necessarily limited to;
- Legal
  - Financial (including accounting and payroll)
  - Administrative
  - Human Resources (including diversity and disability)
  - Health and Safety
- 1.1.14 This would enable the retention of the current status quo regarding the provision of services from FRAs and does not extend their capacity to charge more generally. The intention is not for the FRA to make a profit in terms of supply of these services, but rather to administer what was effectively an in-house function in the most cost effective way as ultimately FRAs would be both supplying and paying for the service.
- 1.1.15 Without an addition to the current Charging Order an FRA will not be able to undertake the same service provision to their RCC as they currently do internally for their control room. If the current situation remains RCCs will not be able to gain the range of assistance and advice that they require to operate a full fire control service.

## **1.2 CONSULTATION**

- 1.2.1 A second consultation about adding this new category was sent on 28 February 2007 to the same stakeholders and anyone who had responded to the previous consultation. It was distributed by e-mail and also made available on the Department's web site. It closed on 30 May 2007.

1.2.2 31 responses were received with 30 from the English Fire & Rescue Service and 1 from a Regional Management Board. There were no responses from industry though they were included in the consultation, as this new category did not impact on them.

### **1.3 QUESTION 1 – DO YOU AGREE WITH THE ACTION BEING TAKEN BY FRA?**

1.3.1 From the 31 responses received:

- 29 (94%) were in favour of the action
- 2 (6%) did not support the action

1.3.2 The main reasoning for the support was that without an addition to the charging order FRAs would be unable to undertake the same service provision to the Regional Control Centres as they did internally for their control rooms.

1.3.3 Another reason for support was that it would enable the FRA to administer the in-house function in most cost-effective way. Without this power the FRA would not be able to provide services to the RCC Company which could lead to inefficiencies and greater costs.

1.3.4 One respondent recommended the removal of the specific stipulation of providing only to regional fire control centres . This was due to the perceived need to widen to include future support services.

1.3.5 We believe that this would fundamentally alter the meaning of the action and such a change could not be undertaken without another consultation. It will be looked at as a possible future amendment.

1.3.6 Conversely, one respondent said they did not support the action since the suggested range of services needed to be more limited e.g. the provision of basic administrative back office. They felt that the proposed range could cause a conflict of interest between the Company and Fire & Rescue Authority.

1.3.7 The other respondent who did not support the action stated that though generally they thought it should be added they perceived that there could be difficulties for the Local Authority Controlled Company to sub-contract out. They suggested that there needed to be clarification as to the FRA action if the LACC determines to sub-contract or alternatively for where there is more than one FRA, a nominated FRA may act as the sub-contractor.

1.3.8 Guidance on using the new category should assist in clarifying both issues raised and it is our view that there is adequate support to add the new action.

### **1.4 QUESTION 2 – DO YOU AGREE WITH THE PROPOSED PERSONS WHO MAY BE CHARGED?**

1.4.1 From the 31 responses received:

- 30 (97%) were in favour of proposed person to be charged
- 1 (3%) was not in favour

- 1.4.2 This was generally supported to enable the retention of current arrangements. It was seen that without this RCCs would not be able to gain the range of assistance and advice that they require to operate a full FiReControl service.
- 1.4.3 One respondent in favour felt that if the LACC had been designated as a public body under the Local Authorities (Goods and Services) Act 1970 then FRAs would have been able to charge for any support services provided by FRAs and since this had not occurred it was essential that the extension to the Charging Order be allowed.
- 1.4.4 Several respondents required clarification that any regional control centre could be charged and not just the LACC for the region in which the FRA sits.
- 1.4.5 Our view was that this was a valid point and the wording of the proposed person to be charged and the guidance will be amended to reflect this.
- 1.4.6 The one respondent that did not agree with the proposed persons who may be charged stated that this was because the LACC may determine to appoint one FRA to provide on its behalf the support services function and charge the other FRAs within the region.
- 1.4.7 Another respondent noted that though they did not think it was in the public interest for FRAs to engage in commercial activities of any kind they were satisfied the proposal limited such activity sufficiently.
- 1.4.8 Guidance on using the new category should assist in clarifying these issues and it is our view that there is adequate support to add the person who should be charged.

## **1.5 RECOMMENDATIONS**

- 1.5.1 On the basis and balance of the findings of the consultation, we have recommended that the new category is added to the Charging Order since without the addition an FRA would not be able to undertake the same service provision to their RCC as currently carried internally for their control room. This will come into effect on 31 October 2007.
- 1.5.2 The draft guidance on trading for FRAs issued in 2006 will be updated to include comments received in the consultation.