

**NORTH WALES FIRE AND RESCUE SERVICE**

**FIRE AUTHORITY EXECUTIVE PANEL REPORT**

DATE:	22 <sup>nd</sup> April 2004
REPORT BY:	<b>CHIEF FIRE OFFICER</b>
PURPOSE OF REPORT:	To agree a response to the consultation document "Charging by Fire and Rescue Authorities"

**1. INFORMATION**

- 1.1 In the Fire and Rescue Bill published on 13<sup>th</sup> January 2004, Clause 19 enables the Secretary of State to regulate the services for which fire and rescue services can charge. As the Bill is currently drafted the power to make an order under Clause 19 will be the responsibility of the National Assembly for Wales.
- 1.2 While we can therefore expect a separate consultation from the Assembly, the Fire Authority may wish to submit comments to the Office of the Deputy Prime Minister (ODPM) on the consultation document "Charging by Fire and Rescue Authorities". Responses are invited by 7<sup>th</sup> May 2004. A copy of the document is attached to this report.

**2. BACKGROUND**

- 2.1 The 1947 Fire Services Act has allowed Fire Authorities to use their resources to respond to incidents other than fire calls. These activities are referred to as Special Services. The current policy of the North Wales Fire and Rescue Service was agreed at the Executive Panel Meeting on 18<sup>th</sup> September 1996, and it was agreed that the Service would not charge for Emergency Special Service calls which include:
  - Persons reported trapped or in distress
  - Road Traffic Accidents/Air and Railway Accidents
  - Incidents involving – chemicals, radiation or biological hazards
  - Flooding in domestic property or area flooding
  - The Service would also not charge for animals trapped or in distress

## 2. **BACKGROUND** (continued)

- 2.2 The Fire and Rescue Bill Clause 19 provides that fire and rescue authorities may be authorised by order to charge specified persons for specified actions. However the clause does not allow charges for extinguishing fires, or protecting life and property in the event of fires, except in respect of fires at sea or under the sea. Nor does it allow charges for emergency medical assistance.

Subject to an order being made to permit it, the fire authority could charge for attending false alarms from automated fire alarm systems. An order under Clause 19 can allow for third parties (e.g. insurance companies) to be charged for a service provided to others.

- 2.3 It is the intention of the government to replicate the charging policies that exist at the moment. However, the Clause 19 power is wide enough to allow for a charge to be levied for discretionary services not currently subject to a charge or the delivery of a statutory duty, other than extinguishing fires. Should there be a proposal to do so it will be subject to further consultation.
- 2.4 It is not proposed to lay down a scale of charges nor the circumstances in which they impose the charge. It will be for the authority to decide the amount of the charge subject to the restriction that they may not make a profit. It is understood that some authorities have made representation on this restriction in their general comments on the Fire and Rescue Bill.

## 3. **CONCLUSION**

- 3.1 Annex D of the consultation document lists the proposed categories of chargeable services to be included in the first order made under the Clause 19 power. Of the proposed categories of chargeable services the following are not present subject to a charge by the Fire Authority:

### Containment and Clearance of Debris, Spillages or Leaks

A charge is made for dealing with spillages or leaks and clearing material following road traffic accidents on trunk roads. Unitary Authorities are not charged for clearing materials from roads in their area.

### Provision or Removal of Water

A charge is made only for flooding at commercial/industrial premises.

### Effecting Entry to Premises

No charge is currently made.

### Lift Rescue

No charge is currently made.

3. **CONCLUSION** *(continued)*

Rescue of Animals

Currently no charge is made.

Removing Dangerous Structures

Currently no charge is made.

Provision of Advice Akin to Consultancy

This relates to the provision of fire safety advice and is detailed under Paragraphs 11 to 14 on page four of the consultation document. ODPM are inviting comments on how an Authority may mitigate any apparent conflict of interest between providing chargeable advice and acting as the enforcement agency for fire safety.

- 3.2 Members may wish to consider in the response to the ODPM that in the first order the fire and rescue authorities should be able to charge for false alarms on automatic fire alarms. This has been identified as a major issue in the IRMP and fire authorities need the discretion to charge.
- 3.3 Although not in the consultation document, the issue of fire fighting at sea is relevant to the North Wales Fire and Rescue Service. Members should consider recommending that the power to charge for this service should also be included in the first Order made under Clause 19 of the Bill.

4. **RECOMMENDATIONS**

- 4.1 That members comments are taken into account and that the Chief Fire Officer responds to this consultation document; and
- 4.2 Once the first order is made under Clause 19, a further report is submitted to the Executive Panel to determine the circumstances in which it chooses to levy any charge.

# Charging by Fire and Rescue Authorities: A consultation document

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## Introduction

1. The government published the Fire and Rescue Services Bill on 13th January 2004. Clause 19 of the Bill enables the Secretary of State to regulate the services for which fire and rescue authorities can charge. It is intended that regulations under the Bill will discharge the White Paper commitment to retain the power to charge for services that fire and rescue authorities currently enjoy and to continue the prohibition on charging for extinguishing fires.
2. While the intention is to replicate the charging regime which applies at present, Clause 19 also opens the way for additional services to be added in future should this be desired.
3. This consultation paper invites views on the scope and content of the initial set of draft regulations. Should it be decided that it is desirable to extend the powers of the service to charge there will be a further consultation.

## Existing charging powers

4. The 1947 Fire Services Act has allowed fire authorities to use brigade resources to respond to incidents other than fire calls. Section 3(1)(e) states that an authority may:  
*employ the fire brigade maintained by them, or use any equipment so maintained, for purposes other than fire-fighting purposes for which it appears to the authority to be suitable and, if they think fit, to make such charges as they may determine for any services rendered in the course of such employment or use.*
5. The relevant activities, often known as special services, cover situations such as road traffic accidents, lift releases, clearing up spills or leaks, removal of water and effecting entry to premises. This provision recognised that authorities were funded to maintain an efficient fire brigade but that there was no explicit funding for the ancillary (but nevertheless important) activities that had fallen to brigades by default.
6. While section 3 appears to give authorities a wide discretion in determining the charge to be set for delivering a discretionary service, we believe that they are constrained by general principles relating to local government finance. If correct, this prevents a charge greater than the full cost of provision from being levied as any greater charge would amount to unauthorised taxation.

## The Fire and Rescue Services Bill power - Clause 19

7. Annex A reproduces Clause 19 as it stood at the time of introduction of the Bill. A prohibition on charging either for extinguishing fires or for protecting life and property in the event of a fire remains, as does the requirement that the charge levied is limited to full cost recovery. The power is wider than that contained in s93 of the Local Government Act 2003, which deals with charging for discretionary services by a Best Value authority. (A discretionary service is one which an authority is empowered but not obliged to provide). The s93 power requires that the person receiving the service gives express prior consent to its provision if a charge is to be levied.
8. Clause 19 recognises that it may not be possible or desirable to wait for consent to be given in some of the situations with which fire and rescue services currently deal. The clause also allows for third parties to be charged for a service provided to others. The latter may, for example, be used to recover the cost of effecting a lift release from a building management company rather than from those who had been in the stalled lift.
9. Authorities have the power under the 1947 Act to charge for services which have become core duties in the Bill, such as dealing with traffic accidents, and clause 19 retains that power. However, the first Order made will, in accordance with government's commitment in the White Paper, do no more than replicate the charging practices that exist at present. While the clause 19 power is wide enough to allow for a charge to be levied for discretionary services not currently subject to a charge or

the delivery of a statutory duty, other than extinguishing fires, any proposal to do so will be the subject of further consultation.

### **Current chargeable services**

10. ODPM canvassed brigades on the scope of their current charging in August and November 2003. The August survey asked for the five most common areas of charging activity while the November survey requested an exhaustive list of chargeable services. A summary of the responses to the August survey appears at Annex C. Annex D sets out the Government's proposals for the coverage of the Regulations; it is informed by the responses to the November survey.

11. An important area of activity on which we invite specific comment is the provision by fire authorities of fire safety advice. Under section 1(1)(f) of the 1947 Act authorities are under a duty to secure:

*efficient arrangements for the giving, when requested, of advice in respect of buildings and other property in the area of the fire authority as to fire prevention, restricting the spread of fires, and means of escape in case of fire*

12. This duty is carried through to clause 6(2)(b) of the Bill. It is worthy of note that clause 6(2)(a) lays a new duty on authorities to actively promote fire safety in their area, though it is generally true that authorities have been adopting such a pro-active approach for a number of years. We have no wish to see the effectiveness of safety campaigns being compromised through charging.

13. However, we believe that it is possible to distinguish between community safety activities or general advice and the provision of what amounts to detailed consultancy on appropriate safety arrangements for major projects as an alternative to engaging a commercial fire engineering consultant. Examples would be the Channel Tunnel rail link, the construction of new shopping malls and other major civil engineering projects.

14. We would value suggestions on how a distinction might be drawn between the type of advice that should be provided free and that which should attract a charge. We also invite comment on how an authority may mitigate any apparent conflict of interest between providing chargeable advice and acting as the enforcement agency for fire safety.

15. The recent ODPM Select Committee report noted that there was scope to expand the extent of charging in several areas, including road traffic accidents and repeat false alarms from automated systems, but that there was a need for further work. We agree that it is too early to propose the extension of charging to cover these areas of activity but welcome comment on how work might proceed. The commitment to extensive consultation on any future proposals for an extension of charging remains.

### **Setting the charge**

16. The approach to charging for services varies between authorities, and brigade survey responses showed that it is common for incident commanders to be asked to make a recommendation about whether a charge should be levied in a particular case. It is not proposed to lay down a scale of charges nor the circumstances in which an authority should (or should not) charge for a particular service.

17. It will still fall to each authority to decide whether they wish to charge for a particular service and the circumstances in which they impose the charge. This reflects the flexibility that currently exists. It will also be for the authority to decide the amount of the charge subject to the restriction that they may not make a profit.

18. Authorities will need to establish a period over which it would be appropriate to gather information or make estimates to calculate the cost of providing a particular kind of service and establish a robust methodology for assessing those. They may find it helpful to draw on existing and

familiar principles as set out in the CIPFA Best Value Accounting Code of Practice (the Code). One option would be to use the Code's definition of Total Cost. As an alternative, authorities may wish to consider adding to Total Cost an appropriate contribution for Corporate and Democratic Core (CDC) and Non-Distributed Costs (NDC), as those terms are defined in the Code, as a part of the costs of provision.

19. Authorities should use the best available information about the expected cost for each service over the period adopted by the authority for assessing the cost of that particular service. There may, however, be circumstances where an authority inadvertently recovers more than its costs and thus generates a surplus. Where surpluses or deficits of income in relation to costs result from the use of estimated income and expenditure information or from unexpectedly high or low uptake for a service, such surpluses or deficits should be taken into account when setting charges in the following year. Then, taking one year with another, income from charges does not exceed the costs incurred and the authority complies with the requirement in clause 19(5).

20. In certain circumstances authorities may wish to offer certain services at a reduced charge or for free, for example to the disabled, the unemployed or those in receipt of benefit, while making a charge based on the cost of providing the service to other recipients. This is reflected in clause 19(4)(b) which permits the authority to set different levels of charge, including a nil charge. Differential charging for discretionary services by local authorities is already well established.

21. Differential charging should not be taken to mean that authorities should set out to crosssubsidise services between recipients, for example by charging some recipients more than the cost of provision for a service and others less for the same service while overall charging no more than the costs incurred and thus conforming with the duty. The costs of offering services at a reduced charge should be borne by the authority and not subsidised by other recipients of the same kind of service.

22. Category 9 in Annex D covers the supply of documents, which can include photographs and other audio-visual material. From January 2005 requests for material of this type are likely to be covered by the provisions of the Freedom of Information Act 2000 (FOIA) which will take precedence over the charging power created by the Bill. Under the FOIA an Authority is required to establish a publication scheme and to indicate if the supply of particular classes of document will be subject to a fee.

23. A model publication scheme has been produced by the Fire Lawyers' Network and approved by the Information Commissioner. It states that any fee charged will be calculated by looking at the costs directly and reasonably incurred in locating and supplying the information requested. Enquirers will be sent a fees notice, for payment within 3 months of the request having been made, with the supply only being made on payment of that fee.

## **Trading**

24. A power for Best Value authorities to trade in function-related activities was introduced by section 95 of the Local Government Act 2003. These powers will be commenced by Order and will form part of the freedoms and flexibilities package granted to authorities rated "fair" and above under Comprehensive Performance Assessment (CPA). There is no provision for a Best Value authority to trade in functions which it is obliged to provide.

25. We do not propose to allow fire authorities to be included in any s95 Order until a bespoke CPA for them is introduced in 2005. While this places a restriction on the minority of fire authorities, principally County Councils, that are already subject to the CPA process in their role as a Local Authority, we believe that it is justified and that it is appropriate for trading freedoms for fire authorities to flow only from their own CPA assessment.

## **Responses**

You are invited to comment on any aspect of the proposed regulations. In particular, views are sought on the following:



(a) Have any categories of service for which a charge is currently levied been omitted from Annex D? For example, are charges levied in some circumstances for Community Fire Safety work?

(b) Are the classes of person to be charged appropriate for each of the categories of service specified in Annex D?

(c) Is it appropriate that authorities already subject to the Local Authority CPA process will be prevented from trading in fire related services until a bespoke fire CPA is introduced?

(d) With the exception of the powers under section 3 of the Fire Services Act 1947 and section 93 of the Local Government Act 2003, do fire authorities consider that they currently have any other powers to charge or to trade in function related services?

(e) 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?

(f) How might ODPM take forward the recommendations of the recent Select Committee with respect to extending the reach of charging? Responses to this consultation should be submitted by 7th May 2004 and should be addressed to:

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They may also be sent by e-mail to: [fsed6@odpm.gsi.gov.uk](mailto:fsed6@odpm.gsi.gov.uk)

## **Annex A: 19 Charging**

(1) The Secretary of State may by order authorise a fire and rescue authority to charge a person of a specified description for any action of a specified description taken by the authority.

(2) But an order under subsection (1) may not authorise charging for.

(a) extinguishing fires;

(b) protecting life and property in the event of fires.

(3) The power in subsection (1) includes power to authorise a charge to be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority.

(4) If a fire and rescue authority is authorised by an order under subsection (1) to charge for taking action of a particular description and the authority decides to do so.

(a) the amount of the charge is to be set by the authority;

(b) the authority may charge different amounts in different circumstances (and may charge nothing).

(5) In setting the amount of a charge, the authority must secure that, taking one financial year with another, the authority's income from charges does not exceed the cost to the authority of taking the action for which the charges are imposed.

(6) Before making an order under this section the Secretary of State must consult such persons as he considers appropriate.

(7) In this section "financial year" means the period of 12 months ending with 31 March.

**Annex B: 2001/2 special service incident statistics**

RTA - no rescue	30223
Lift release	26057
Effecting entry	14809
Spills & leaks - not as a result of an RTA	14885
Provision/removal of water	13649
RTA - involving a rescue	10187
Making safe	8288
Rescue/release of person	8244
Advice only	6052
Animal rescue	6048
Removal of object from person	4488
Assistance to police or ambulance	3534
First aid	2168
Standby/precautionary action	2094
Suicide/attempted suicide	862
Recovery or retrieval of object	532
Industrial accident	314
Aircraft incident - no fire	268
Railway accident	95
Sports event	46
Farming accident	36
Services not required	18215
Other special service	3168

## Annex C: Survey of Brigade charging policies for special service incidents

A short questionnaire was sent to all brigades in England and Wales in August 2003, asking whether each brigade levies a charge for special service incidents (or had levied such charges). Brigades were also asked to give examples of the main categories of incident and to provide information on how charges are calculated.

Forty out of 50 brigades sent in returns, a response rate of 80 per cent. All respondents stated that they charge for some special service incidents.

The table shows the most commonly cited examples of charging:

<b>Special service for which brigade charges:</b>	<b>Number of brigades citing this service as a main example:</b>
Clearing up after chemical or other spillage, including RTAs	25 (63%)
Clearing up domestic or commercial flooding	22 (55%)
Effecting entry into a premises	15 (38%)
Hire of crews and equipment for special events (e.g. being on call for major sporting or cultural events, use for film crews)	14 (35%)
Hire of salvage or other major equipment (e.g. turntable ladder, pumping appliances)	12 (30%)
Providing water in non-emergency situations	11 (28%)
Providing fire reports/interviewing officers (e.g., by solicitors for insurance claims)	9 (23%)
Removing dangerous structures (e.g. trees, TV aerials)	8 (20%)
Lift rescues	7 (18%)
Dry riser tests	5 (13%)
Saving sinking boats	4 (10%)
Animal rescues	3 (8%)

## **Annex D: Proposed categories of chargeable services**

*Proposed categories of chargeable services to be included in the first Order made under the Clause 19 power.*

The categories below are not intended to replicate the wording of the Order to be drafted but to describe the proposed ambit of the Order. The categories reflect the current practice of brigades in England & Wales in respect of incidents that do not involve fire. It will remain a matter of discretion for each authority to determine the circumstances in which it chooses to levy any charge that it is permitted to impose.

### **1. Loan or hire of equipment, operational personnel or premises**

The intention is to cover situations in which the authority agrees to the loan or hire of equipment from its own stocks to companies, organisations or individuals. This usually takes the form of hire of items such as hoses, small pumps, salvage sheets, lighting and generators. One example given by a brigade in response to the November 2003 survey was the hire of thermal imaging equipment by a company keen to determine the source of heat loss in its industrial premises.

It would also cover the hire by media companies of authority appliances to appear in television productions (such as "London's Burning"); where authority personnel are also used there would be a further charge under item 3 below. Pre-planned events at which the authority is asked to provide precautionary cover, such as a major firework display or special event, would also fall to be dealt with under this category of charge.

It is not meant to deal with situations in which one fire authority makes its resources available to another fire authority for which separate reinforcement and mutual assistance provisions exist.

*Persons to be charged:* any person, company or organisation requesting the supply of this category of service.

### **2. Testing, repair and recharging of equipment other than that owned by the authority**

To cover requests made by owners of equipment for brigade staff to conduct periodic or ad hoc inspection and maintenance or repair. Common examples are hoses, hydrants and protective clothing. This category could also cover the recharging of compressed air cylinders and breathing apparatus.

*Persons to be charged:* any person, company or organisation requesting the supply of this category of service.

### **3. Provision of authority staff other than in response to an operational incident**

The cost of authority staff provided to deal with a chargeable incident would be included in the charges levied under other categories of the Order. This category is to cover situations such as interviews in connection with insurance claims or legal proceedings. It might be used to deal with the instances when brigades have been asked to supply uniformed staff as extras for use by media companies during filming and where a Fire Service presence has been requested as a safety precaution.

*Persons to be charged:* any person, company or organisation requesting the supply of this category of service.

### **4. Containment and clearance of debris, spillages or leaks**

This category will cover incidents such as those at which the Service is required to clear material following road traffic accidents or shedding of loads. It will also deal with leakage or inappropriate discharge of material from storage tanks.

*Persons to be charged:* the owner, manager, occupier or operator of any premises, property or vehicle which, prior to the incident giving rise to the need for clearance, contained or conveyed the material to be cleared.

## **5. Provision or removal of water**

It is not uncommon for fire authorities to be asked to arrange for the large scale supply of water in situations that are not emergencies. Similarly, requests can be made for the supply of high volume pumping equipment to clear a body of water.

Current practice on dealing with flooding in residential premises varies between authorities. This can range from never imposing a charge to reserving the right to charge where the householder is deemed to bear some responsibility for the flooding. When dealing with flooded commercial premises it is usual for authorities to levy a charge.

We do not propose that the Order should distinguish between domestic or commercial premises or attempt to deal with accidental cases of flooding in contrast to spate conditions. The discretion afforded to individual authorities will allow them to determine their own policy on this matter as they do currently.

*Persons to be charged:* the owner, manager, operator or occupier of the premises or event at which the service is provided.

## **6. Effecting entry to premises**

To deal with requests for assistance in gaining access to premises. Brigades have indicated that in many cases these relate simply to occupiers who have lost keys or otherwise locked themselves out of their premises.

*Persons to be charged:* the owner, manager, operator or occupier of the premises concerned or the person making the request for assistance.

## **7. Lift rescue**

To deal with requests to release people from stalled or faulty lift cabins. This is not meant to include trapping situations, in which a person has become physically entangled in the lift mechanism.

Historically, these two types of call have been reported by brigades in statistical returns as "lift rescue" and "rescue or release of people" respectively (although the latter also includes other types of rescue.)

*Persons to be charged:* the owner, manager, operator or occupier of the premises in which the lift is situated.

## **8. Rescue of animals**

Current practice in the majority of authorities is for the rescue of animals to be effected free of charge. Among authorities that do charge for animal rescues some draw a distinction between domestic animals and livestock but as this is not universal practice we do not propose to include such a distinction in the Order.

*Persons to be charged:* the owner or keeper of the animal concerned.

## **9. Supply of documents**

It is intended that this category would encompass requests for the provision of fire scene photographs or video footage, copies of fire reports or the issue of fire certificates where there is no separate prohibition on charging. It is not intended that this category would deal with requests for the supply of

information or documents that are made under the Data Protection Act or any supply required under statute where separate charging arrangements exist.

*Persons to be charged:* any person, company or organisation requesting the supply of this category of service.

## **10. Training**

To cover the provision by brigades of training courses/events to members of the public, companies or other organisations. This will not include the provision of fire service operational training to members of other fire brigades for which separate arrangements exist.

*Persons to be charged:* any person, company or organisation requesting the supply of this category of service.

## **11. Removing dangerous structures**

To cover those instances when the Service is required to remove structures or objects at height which pose a risk to public safety.

*Persons to be charged:* the owner, manager, operator or occupier of the premises at which the structure or object is located or to which it is attached.

## **12. Provision of advice akin to consultancy**

Comment on this category is invited in paras 11-14 above.