

Circular number	51/2007	Date issued	12 November 2007
This circular is	For Action by FRSs	Response Required by	14 December 2007
This circular is	Relevant to the National Framework		
Status	This circular asks Fire and Rescue Services to comment on the draft New Dimension Transfer of Ownership Agreement.		

New Dimension Transfer of Ownership Agreement

Issued by:

Fay Sowerby
New Dimension Policy Advisor

Addressed to:

The Chair of the Fire and Rescue Authority
The Chief Executive of the County Council
The Clerk to the Fire and Rescue Authority
The Clerk to the Combined Fire and Rescue Authority
The Commissioner of the London Fire and Emergency Planning Authority
The Chief Fire Officer

Please forward to:

Legal Directors
Finance Directors

Summary

Communities and Local Government (CLG) have previously informed Fire and Rescue Services (FRSs) of the intention to transfer ownership of New Dimension assets to individual Fire and Rescue Authorities. This circular provides FRSs with the opportunity to comment on the draft Transfer of Ownership Agreement under which the transfer will be enacted on 1 April 08.

For further information, contact:

Fay Sowerby
New Dimension Policy Advisor
Fire and Resilience Directorate
Zone 9/H9
Eland House, Bressenden Place
London, SW1E 5DU

Direct line **0207 944 3769**
Fax **0207 944 8319**
E-mail Fay.Sowerby@communities.gsi.gov.uk

Website www.communities.gov.uk

New Dimension Transfer of Ownership Agreement

1.0 Background

- 1.1 The New Dimension programme, as a collaboration between Communities and Local Government (CLG) and the Fire and Rescue Service (FRS), has enhanced the ability of the FRS to respond to major disruptive events involving CBRN materials, collapsed or unstable structures, and to displace large volumes of water.
- 1.2 Fire Service Circular (FSC) 26/2007 provided information on the Long Term Capability Management (LTCM) project of the New Dimension programme, which is responsible for putting in place management structures and systems to maintain the New Dimension capabilities in the long term. This Circular detailed the key aspects of the LTCM proposals including that Fire and Rescue Authorities (FRAs) take full and direct responsibility for the management of the New Dimension assets they host from 1 April 2008. As part of this proposal, FRAs will take on legal ownership of these new resilience assets.
- 1.3 FSC 37/2007 and 46/2007 included updates surrounding work on the legal transfer of ownership for these assets. They informed FRSs that CLG has drafted a Transfer of Ownership Agreement to enact the handover of New Dimension assets in consultation with representatives of the key stakeholders; LGA, CFOA and the Fire Lawyers Network (FLN), in advance of circulating wider to individual FRAs for comments.

2.0 New Dimension Transfer Agreement

- 2.1 Attached is the draft Transfer of Ownership Agreement for New Dimension assets. FRAs are asked to provide initial comments on the draft agreement to Fay Sowerby, whose contact details are provided above, by **14 December 2007**.
- 2.2 This draft Agreement incorporates comments already received from representatives of stakeholder organisations following consultation with them over the summer. At Annex A we have provided questions and answers on the main issues surrounding the transfer raised so far. To summarise, below are the key terms of the transfer:
 - Maintenance of the New Dimension capability will be managed on behalf of all FRAs by an appointed contractor, to help ensure interoperability and so maintenance can be planned across the whole country to avoid leaving capability gaps while vehicles are off the run. Procurement of the long-term maintenance contract is currently underway by Firebuy Ltd and the successful contractor is due to be announced in Summer 08. FRAs will be required to enter in to the maintenance contract through the relevant Terms of Access under an Access Agreement between the FRA and Firebuy Ltd;
 - Until procurement of the maintenance contract is complete, FRAs will be expected to maintain the assets in line with interim requirements which will continue to be funded by CLG;
 - FRAs will be expected to ensure their New Dimension assets remain interoperable with those of other FRAs; and

- FRAs will ensure that the equipment remains fit for purpose and able to respond to a wider than local emergency i.e. a regional or national incident (level 3/4).

2.3 The Transfer of Ownership Agreement does not include references to long term funding arrangements post transfer being enacted. However Government is committed to the “new burdens” principle, that where a new burden is imposed on FRAs by central government, this will be funded accordingly. Hence, CLG will provide new burdens funding in recognition of the additional costs FRAs will face under the long term maintenance contract in maintaining the assets to respond to a level 4 incident. The overall level of future funding for New Dimension will be dependent on costs deriving from the procurement of the long-term maintenance contract. We will consult on the proposed financial package as soon as we are able, but in summary and subject to Ministerial and Treasury approval, we will seek to fund the following:

- maintenance and repair;
- training;
- crewing (where applicable);
- consumables; and
- routine asset refreshment.

2.4 In terms of routine asset refreshment such as small items of equipment which require frequent refresh (i.e. IT/communications), CLG are working with stakeholder representatives to develop a policy over how this will be managed.

2.5 Discussion with stakeholder representatives has also been undertaken on major asset refresh, where the equipment becomes unfit for purpose over time, is no longer operationally viable or more technologically advanced equipment becomes available on the market. We expect the Operational Assurance function (referred to as the Blue Box), to be undertaken by CFOA, to review and provide the Department and FRAs as represented by the LGA, with proposals for equipment renewal, and arrange for interim arrangements between FRAs to cover any equipment losses until the next major refresh, proposed every five years over the 16 year period. The Department will then consider these proposals within the next Spending Review.

3.0 Transfer of Ownership - Next Steps

3.1 Following this initial consultation on the draft Transfer Agreement, CLG will consider the comments received and take further views from stakeholder representative bodies. The Department will then re-issue a revised version of the Transfer Agreement early in 2008 for a second round of consultation with FRAs. At this second stage, FRAs will be asked whether they are content to sign up to the agreement in principle.

3.2 The legal transfer of ownership will be enacted by 1 April 2008, subject to agreement with FRAs.

Fay Sowerby

ANNEX A: QUESTIONS & ANSWERS ON THE DRAFT TRANSFER OF OWNERSHIP AGREEMENT

Q1. Shouldn't both the LTCM maintenance contract and the Terms of Access be subsets of the draft Transfer Agreement, particularly as it is a condition of the transfer that FRAs will be required to sign up to these contracts?

A. Each FRA will be asked to sign the relevant Terms of Access under an Access Agreement between the FRA and Firebuy Ltd, to use the maintenance contract. The Terms of Access will set out the necessary provisions of the maintenance contract that will be relevant to individual FRAs. It is intended that the transfer of ownership will be enacted before the procurement of the long term maintenance contract is finalised, and therefore we are unable to provide a copy of either of these contracts in advance of the transfer of assets contract being signed.

However, at the collective level, we have and continue to involve both CFOA and the LGA in reviewing all the draft LTCM prime contract documents. FRAs will also be consulted on the Terms of Access and can make any concerns known during the consultation.

Q2. Why do we need a centrally procured maintenance contract? We would prefer to maintain our assets ourselves.

A. The centrally procured contract is necessary to ensure continued interoperability of the assets in the longer term. This will also bring benefits of scale and economy.

Q3. My FRA wants to continue using its own in-house maintenance.

A. Where this is the case, Firebuy have informed bidders for the maintenance contract, with a view to their being able to arrange subcontracting maintenance back to the FRS where this provides benefits and can be done on terms agreeable to both parties.

FSC 26/2007 offered all FRSs the opportunity to express their interest in taking on maintenance and servicing of the New Dimension fleet, as sub-contractor to the maintenance contractor. CLG have received replies from about half of fire services. It is vital that any other FRSs which would wish to be subcontractors in this way tell us as soon as possible, if they have not already done so, so we can inform the potential contractors while the dialogue with them is still underway. We will be able to accept further responses from other FRSs until **30 November 07**.

Q4. Why does the draft Transfer Agreement not cover the long term governance arrangements and provision of a national team for the New Dimension capability?

A. CLG has over recent months liaised with CFOA and the LGA over future governance arrangements for New Dimension capability and how this will be managed in the long-term (referred to as the 'Blue Box'). Specifically, Government needs to have a degree of assurance that the capability will remain fit for purpose, not degrade over time, and continue to be interoperable between FRAs. CLG has discussed with CFOA and the LGA the structure through which this can be best delivered. The 'Blue Box' model broadly follows the structure used for the New Dimension programme, but it will of course be for the FRAs collectively to decide what will be the appropriate arrangements in the future and how they will run them. It may be that the structure proposed for the initial period can be reduced once the capability has bedded down. This will equally apply to the proposed CLG funded national team structure (i.e. Regional and Assistant Fire and Resilience Co-ordinators pre April 08) which is still being considered. The proposed team, once in service, may need to be refined as a result of operational experience. It is for these reasons that we would not wish to restrict FRAs' flexibility by including specific clauses concerning governance and national team arrangements in the draft Transfer Agreement itself.

Q5. Why are there no clauses contained within the Transfer Agreement relating to provision of long-term funding for the New Dimension capability?

A. The draft Transfer Agreement provides the terms and conditions for the legal transfer of New Dimension assets to FRAs. It would not be appropriate for this document to include long-term financing arrangements. Instead the funding provisions will be set out in a separate document. CLG will meet its new burdens obligations, and the overall level of future funding will be dependent on costs deriving from the procurement of the long-term maintenance contract. We will consult on the proposed financial package as soon as we are able but in summary and subject to Ministerial and Treasury approval, we will seek to fund maintenance and repair, training, crewing (where applicable), consumables and routine asset refresh.

Q6. If the Transfer Agreement does not include funding provisions, what assurance do FRAs have that the New Dimension capability will be funded in the long-term?

A. Government is committed to the new burdens principle. Where a new burden is imposed on FRAs, this will be funded accordingly.

As detailed in FSC 32/2007, at the request of FRAs, CLG has agreed to continue funding New Dimension through specific grants in the short term. In the medium-term, we expect to mainstream this funding into the next Revenue Support Grant (RSG) formula review, at which point there will be a clear history of actual costs which the transfer can take into account.

Q7. Which exactly are the assets being transferred?

A. FSC 37/2007 listed the New Dimension assets to be transferred to FRAs and requested FRAs confirm that they hold these assets.

Q8. Why does the Transfer Agreement enact both a transfer of function and of assets

A. The draft Transfer Agreement represents both a transfer of assets and function. CLG requires it to be a transfer of function otherwise it is to be classed as FRSs undertaking a service on behalf of CLG. This would incur an additional VAT cost, and not represent the true situation. The transfer of function does not represent any extension of the function carried out already by the FRSs.

Q9. Does 'meeting the needs of a wider than local emergency' imply any extension of FRS existing responsibilities and duties?

A. No. New Dimension capability has been provided to the FRS to respond to major regional and national incidents. It is only right that FRSs should therefore be expected to use this equipment in responding to such incidents.

Q10. How will insurance of the New Dimension assets be dealt with?

A. FRSs have a statutory responsibility to ensure all vehicles are insured for minimal third party cover under the Road Traffic Act 1988. There is no statutory responsibility to insure the equipment.

Government intends to provide funding to all FRAs for them to insure the New Dimension assets in line with statutory requirements. It is at the discretion of FRAs whether they wish to provide cover above and beyond this requirement.

Q11. Why is the Department not providing for comprehensive insurance?

A. The reason for comprehensive insurance would be to allow FRAs to purchase new vehicles in the event that any were damaged beyond economic repair. However, representative organisations have noted that insurance would not provide full replacement costs, and thus could leave FRAs with a heavy cost burden to replace lost vehicles. Furthermore, it was highlighted to us that some FRAs self-insure and would prefer not to be obliged to provide comprehensive insurance. For these reasons, it has been decided to provide funds for insurance for minimal third party cover, and deal with any vehicle losses as part of major asset refresh.

Q12. What is the reference to specialist consumables?

A. FRAs will be responsible for the majority of New Dimension consumables which can be purchased off the shelf. However, for a very small number of specialist consumables not readily available, FRAs will be required to buy replacements for specialist consumables through a call-off arrangement with Firebuy, to ensure interoperability.