



Providing Fire and Rescue Authorities in England
with powers to trade in any of their functions
Impact Assessment



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Summary: Intervention & Options

Department /Agency: Communities and Local Government	Title: Impact Assessment of providing Fire & Rescue Authorities (FRAs) in England with powers to trade in any of their functions	
Stage: Final	Version: 2	Date: 25 August 2009
Related Publications: Revision of Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 – Consultation Findings & Final Regulatory Impact Assessment		

Available to view or download at:

www.communities.gov.uk/publications/fire/489630

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What is the problem under consideration? Why is government intervention necessary?

The transitional Order for existing limited powers to trade, charging above cost recovery for the provision of specified services outside their core business, for Fire & Rescue Authorities (FRAs) in England ceases on 30 September 2009.

If powers are allowed to cease then FRAs would be deprived of income streams which could potentially be used to reduce the burden on taxpayers.

What are the policy objectives and the intended effects?

We intend to propose making the power to trade available to all local authorities as part of the freedoms and flexibilities consultation. Currently only higher performing local authorities can trade in any of their ordinary functions which they are not already under a duty to provide. It is our proposal that FRAs in England have the same scope of access to trading powers as local authorities. We anticipate that there will be minimum effect as only a small number of FRAs are currently using the trading powers.

What policy options have been considered? Please justify any preferred option.

- a) to do nothing and let powers cease
- b) extend existing specified FRA trading order until revoked; or
- c) provide FRAs with powers to trade in any services which they are not under a duty to provide.

On balance option C is the preferred option since it provides the greatest opportunity for FRAs to access income generation and/or reduce the burden on taxpayers. Without the full trading powers FRAs would not have the same scope of access that local authorities do for trading. This would restrict competition and the potential for wider collaboration.

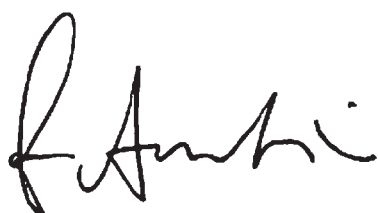
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Information on costs and benefits will be assessed following the set up and running of the company. Questionnaires and surveys to both suppliers and FRAs will be sent out on an annual basis to monitor the situation.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible minister:

A handwritten signature in black ink, appearing to read 'Ian Austin', written in a cursive style.

Ian Austin

Date: 2 September 2009

Summary: Analysis & Evidence

Policy Option: B

Description: **Extend current specified FRA Trading Order until revoked**

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'. Costs of running trading companies. Assumed two trading companies.
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£1 million	10	Total Cost (PV) £8.6 million
Other key non-monetised costs by 'main affected groups.' There will be costs incurred by FRAs in setting up trading companies. Potential negative impact on suppliers through increased competition in the market.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. Turnover for trading companies. Assumed two trading companies over 10 year period.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£1.1 million	10	Total Benefit (PV) £9.5 million
Other key non-monetised benefits by 'main affected groups.' Potential for FRAs to generate income which would be distributed back into their budgets to help fund other projects and/or reduce the burdens on taxpayers. Potential benefits to consumers from increased diversity and competition.			

Key Assumptions/Sensitivities/Risks Those FRAs who trade will be subject to inherent risks in undertaking trading activities.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £0.5 to £1.4 million	NET BENEFIT (NPV Best estimate) £1 million
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What is the geographic coverage of the policy/option?		England			
On what date will the policy be implemented?		By 1 October 2009			
Which organisation(s) will enforce the policy?		No Enforcement			
What is the total annual cost of enforcement for these organisations?		£ N/A			
Does enforcement comply with Hampton principles?		Yes/No			
Will implementation go beyond minimum EU requirements?		Yes/No			
What is the value of the proposed offsetting measure per year?		£ N/A			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		Yes/No			
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		Yes/No	Yes/No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)			
Increase of £	Decrease of £	Net Impact £			
Key:	Annual costs and benefits: Constant Prices	(Net) Present Value			

Summary: Analysis & Evidence

Policy Option: C	Description: To provide FRAs with powers to trade in any services which they are not under a duty to provide
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'. Costs of running trading companies. Assumed three trading companies.
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£1.5 million	10	
Total Cost (PV)			£12.9 million
Other key non-monetised costs by 'main affected groups'. There will be costs of setting up trading companies. Potential negative impact on suppliers through increased competition in the market.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. Turnover for trading companies. Assumed three trading companies over 10 year period.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£1.7 million	10	
Total Benefit (PV)			£14.3 million
Other key non-monetised benefits by 'main affected groups'. Wider potential than Option B for FRAs to generate income which would be distributed back into their budgets to help fund other projects and/or reduce the burdens on taxpayers. Potential benefits to consumers from increased diversity and competition.			

Key Assumptions/Sensitivities/Risks This assumes that FRAs will have same powers as Local Authorities and that they will set up a trading company. Those FRAs who trade will be subject to inherent risks in undertaking trading activities. There is a risk is that FRA trading may impact on competing suppliers already in the market.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £0.9 to £1.9 million	NET BENEFIT (NPV Best estimate) £1.4 million
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		By 1 October 2009		
Which organisation(s) will enforce the policy?		No Enforcement		
What is the total annual cost of enforcement for these organisations?		£ N/A		
Does enforcement comply with Hampton principles?		Yes/No		
Will implementation go beyond minimum EU requirements?		Yes/No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		Yes/No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)		
Increase of £	Decrease of £	Net Impact £		
Key:	Annual costs and benefits: Constant Prices	(Net) Present Value		

Evidence Base (for summary sheets)

Background/Context

1. The *Local Government Act 2003* provides powers for the Secretary of State to make an order enabling Best Value authorities in England to trade in any of the ordinary functions through a company provided they are functions which they are not already obliged to provide.
2. These powers did not apply to local authorities when acting in their capacity as a fire & rescue authority (FRA). An amending Trading Order, (Statutory Instrument 2004 No 2307) came into effect on 1 October 2004 to provide transitional provisions for only those FRAs in England that had interpreted the Fire Services Act 1947 as including a power to trade. It names the FRA and the specific service that the FRA was trading in on or before 1 April 2004.
3. The Trading Order was amended in 2004 (Statutory Instrument 2004 No 2573) in order to correct an error. It was subsequently amended in 2007 (Statutory Instrument 2007 No 385) to allow for the combination of two FRAs.
4. At present only those FRAs in England that had interpreted the Fire Services Act 1947 as including a power to trade have access to the limited trading powers. This covers 30 out of the 46 FRAs with access to limited trading powers which can include such services as:
 - Fire safety training other than training which is required to be provided as a statutory duty
 - Hiring out of equipment such as vehicles and workshops
 - Provision of audio-visual training materials, training and conference facilities
 - Training and provision of audio-visual training materials
 - Vehicle maintenance and repair.
5. Only two FRAs have set up a trading company to date. The available evidence to date has indicated that existing trading powers have not been used widely by FRAs and there has been a limited appetite from FRAs to use extended powers. In the current economic climate this situation may change and would need to be monitored on a regular basis.

2007 Consultation

6. The FRA power to trade was originally intended to expire on 30 September 2007 when it was to have been linked to the Comprehensive Performance Assessment (CPA). Since CPA was due to cease in 2009 it would only have served a limited purpose to link FRA trading to this system and three options were considered through a consultation process in 2007.

Option A – Do nothing

This would cease the powers for FRAs to trade as from 30 September 2007.

Option B – Extend transitional powers until 2009

This would maintain the status quo by continuing the existing powers for specified FRAs to trade in certain powers until 30 September 2009. In 2009 the approach to trading powers for local authorities would be considered in the light of revised freedoms and flexibilities following the removal of CPA. This would include FRA trading powers. Any requests for new specified trading powers for a FRA before 2009 would have to be supported by a business case which would have to be approved by the Department.

Option C – Provide all FRAs with a power to trade in any of their functions

This would allow all FRAs to trade in any of their ordinary functions rather than limiting the power to specified activities. It would be similar to Option B in that it would be reviewed in the light of the changes to freedoms and flexibilities in 2009. A business case and risk analysis would be required to be prepared and approved by the authority to trade in functions case which would have to be approved by the Department.

7. Thirty-five responses were received with 33 answering the questions posed in the consultation. From the 35 responses received:
 - twenty-seven favoured Option B (77%) – this was supported by both FRAs and industry, five favoured Option C (14%) – only FRAs supported this option
 - two declined to give a preference for their option (6%)
 - one respondent supported Option A (3%).
8. Those respondents that favoured Option B saw it as the most practical solution in that it gave adequate time to both FRA and businesses to consider the impact of trading without FRAs losing a potential income stream.

9. Further comments to support Option B included:
 - it will enable evidence based decisions to be made
 - it maintains status quo
 - it allows time until new system of freedom and flexibilities is known in 2009
 - with the need for a business case to extend trading it gives a measure of control to FRA activities.
10. One respondent noted that though their preferred choice was Option A they had actually supported Option B in the consultation since they recognised that ceasing trading powers immediately could have a negative impact on income streams and this could have a knock-on effect on the tax payer.
11. Four who preferred Option B stated that they would have equally supported Option C and that this option may have to be considered in the longer term once the new freedoms and flexibilities system is known.
12. Only FRAs (5) supported Option C since they believed it gave greater scope and promoted greater innovation in service delivery. One felt that FRAs were responsible public bodies which should be trusted to act responsibly.
13. One respondent believed that this option would not require the business case to be approved by a stakeholder forum but by the authority alone. This in their view would better embrace the concept of freedoms and flexibilities.
14. However respondents from industry had concerns that the powers in this option would preclude any element of control on the activities of FRAs.
15. The one respondent who favoured option A was opposed to the principle of trading by FRAs. The respondent had concerns about FRAs offering competing services in fire protection, consultancy and training services. They did note that if trading needed to continue that Option B would at least provide opportunity for safeguards to be put in place and give time to gain information on the likely take up by FRAs.
16. They believed that there were currently no mechanisms in place to ensure trading services from FRAs were being offered at market rates and that the public perceived FRAs as the experts in certain areas which could lead to an unfair advantage in the market. They believed that there was still potential conflict of roles with the FRAs acting as both the giver of advice and the enforcer.
17. FRAs have responded to these questions in the past in that they are taking steps to separate their roles and since they have to set up a trading company they are subject to competition law.

18. Concerns over Option A from other respondents were that such removal of powers would have a detrimental impact on potential income streams for FRAs and ultimately have a knock on impact on the tax payer. It was seen as impractical given the time it would take to wind down existing companies.
19. Two FRAs indicated that they currently did not use the trading powers and they did not indicate a preference for their option.
20. On the basis and balance of the findings of the consultation the transitional trading powers were extended until 30 September 2009 to maintain the status quo, without any detriment to the tax payer, until trading powers were reviewed in the light of the removal of the Comprehensive Performance Assessment (CPA).

2009 Consultation

21. There was a 12 week consultation on *Proposed changes to the delivery of Local Authorities' and Fire & Rescue Authorities' Freedoms and Flexibilities after the introduction of Comprehensive Area Assessment*¹. This was published on 6 May 2009, and amongst other questions sought views on the proposal to extend the trading powers to all Local Authorities and FRAs.
22. The consultation paper, which included the initial Impact Assessments, was sent to a wide range of stakeholders including all Local Authorities, FRAs, charities and lobby groups, businesses and suppliers including Small & Medium sized Enterprises (SMEs). The consultation closed on 28 July 2009.
23. The consultation considered two specific questions in relation to FRA trading:
 - Question 5: Should the power to trade be extended to permit all Fire and Rescue Authorities to trade in all of their services?
 - Question 6: If there is no agreement on the above, should the current FRA Trading Order be extended indefinitely?
24. Thirty-seven responses were received to the consultation with contributions from local authorities, FRAs, Industry (including SMEs) and a charity. Not all respondents answered the specific questions in relation to FRA trading. Where respondents just gave general comments any which were related to FRA trading were also considered.
25. Twenty-one (57%) respondents supported the recommended option to extend all the powers to trade to all FRAs (Question 5). Three (8%) respondents did not support this and thirteen (35%) did not answer this question. Support came from FRAs and Local Authorities. Industry were opposed to this.

¹ www.communities.gov.uk/publications/localgovernment/freedomsflexibilitiescaa

26. Reasons for support included:

- will bring FRAs into line with the trading powers available to county services as part of a local authority, and into line with the family of local government bodies
- depriving FRAs of existing income streams could result in a greater burden on taxpayers which would hinder a more modernised service
- will stimulate a more entrepreneurial public sector and increase partnership working as well as maintaining maximum flexibility for future developments
- will enable FRAs to work with local partners to achieve potential efficiency savings e.g. shared services.

27. Reasons for opposition included:

- fundamentally wrong for a public sector emergency service to charge for its non core activities
- authorities that provide an advice service should not also act as enforcing agent
- unfair competition – taking work away from SMEs.

28. Similar concerns have been raised in the past and our view was:

- FRAs would not neglect their statutory duties in favour of chargeable activities. To do so would put an authority at risk of intervention for failing to discharge its' statutory satisfactorily. There is no compulsion for FRAs to recover their costs and many chose not to do so
- FRAs are taking steps to separate their roles and it is up to them to manage this
- FRAs are constrained in that any service provided on a commercial basis (beyond simple cost recovery) is delivered through a company. This will make them subject to competition law.

29. Thirteen (35%) respondents supported the extension of the existing limited FRA Trading Order if the extension of all powers could not be agreed (Question Six). Six (16%) respondents did not support this and eighteen (49%) did not answer this question.

30. Where this was supported it was considered essential so that FRAs did not lose their potential income streams now or in the future. Some of these respondents considered that if this option went ahead that it should be time limited.

31. Respondents who did not support this option either considered that FRAs should have no access to trading powers or that they should have access to the complete set of trading powers as proposed in Q5.

32. Though there was limited response from existing suppliers to the consultation the Small Firms Impact Test (see paras 65-70) demonstrated that 94 per cent of firms contacted did not support the extension of trading powers.
33. The majority of responses to the consultation paper supported the extension of the power to trade to all FRAs in England. This approach ensures that FRAs have the same scope of access to trading powers as local authorities. There would be the opportunity for FRAs to generate revenue which they could either invest in fire safety programmes or use to keep down council tax. With regards to the respondent who did not support the proposal, there are the necessary legal safeguards in place to protect from such abuses of the system. The 2004 Order requires an authority to recover the costs of any services provided to the company. FRAs are required to comply with competition law, state aid principles and also the procurement regulations which enforce rules on transparency, free movement of goods and non discrimination.

Policy objective

34. To examine the options to replace the current transitory trading powers for Fire & Rescue Authorities under the *Local Government (Best Value Authorities) (Power to Trade) (England (Amendment) Order 2004*.

Policy options

35. Three options have been identified, see below.

**Option A:
Do nothing and let powers cease**

36. This would remove existing powers from FRAs.

**Option B:
Extend existing specified FRA trading order until revoked**

37. This would maintain the existing powers for certain named FRAs to trade in specified powers. These powers would continue until revoked. Any requests for new specified trading powers for a FRA would have to be supported by a business case.

Option C:

Provide FRAs with powers to trade in any services which they are not under a duty to provide

38. This would allow all FRAs to trade in any of their ordinary functions that they were not under a duty to provide rather than limiting the power to specified activities.

Costs and benefits

Sectors and groups affected

39. Businesses (including Small and Medium sized Enterprises), consumers, public and voluntary sectors.
40. The powers allow FRAs to engage in activities which are also undertaken by the private sector; however, it is not necessary to assume that FRAs will necessarily be displacing business from the private sector. The trading powers may be used to improve competition and contestability or to fill a gap in the market in the provision of services to the public.

Option A: Do nothing and let powers cease

COSTS

41. This option would mean that FRAs would be deprived of existing income streams and thereby possibly increase the burden on tax payers. Two FRAs are already trading and there would be resources (cost and time) involved in winding down existing schemes.
42. The costs of closing down a trading company are not known. There would also be costs of transferring staff and pensions back to the FRA. If transfer was not possible then there could be redundancy costs. Assets and stock would need to be disposed of and any outstanding loans covered.
43. There is only the possibility of New Burdens for Option (A) ceasing powers, since FRAs will not have the ability to generate income that they already now have. With Options (B) & (C) the choice of whether to trade or not is up to each individual FRA.
44. There are no anticipated costs for suppliers with this option though there may be an impact in the market due to diversity and choice of services currently offered being restricted and so a possible cost to consumers.

BENEFITS

45. Suppliers have the potential to increase their business in markets where FRAs were trading in competing services.
46. FRAs would not be subject to inherent risk in undertaking trading activities.

Option B: Extend existing specified FRA trading order until revoked

47. There are currently two trading companies. The cost and benefit analysis assumes that there will continue to be two trading companies over the 10 year assessment period.

COSTS RELATIVE TO THE DO NOTHING OPTION

48. There would be costs in administering the trading company and preparing business cases if extension of powers was required. Our estimates of the costs of setting up a trading company are between £14,000-£16,000². The set up costs provided do not include the cost of any capital equipment. This cost could potentially vary significantly between trading companies.
49. The analysis currently conservatively assumes that the average annual per company costs are half those of the existing trading company that has provided evidence. This company is seen as very effective. The company annual cost is around £1m and so the analysis uses an average annual per company cost of £0.5m. Using this cost assumption and the assumption of two trading companies the average annual cost is £1m (£0.5m * 2) and the **total PV cost is £8.6m** over 10 years. The running costs of trading companies could vary significantly.
50. Suppliers have potential to lose income through FRAs offering competing services in market.

BENEFITS RELATIVE TO THE DO NOTHING OPTION

51. There is potential for FRAs to continue to generate income which would be distributed back into their budgets to help fund other projects and/or reduce the tax burden. Though there is little evidence to date the annual per trading company turnover generated so far has been around £1,148,000². The analysis currently conservatively assumes that the average annual per company turnover is half those of the existing trading companies that have provided evidence. The analysis uses an average annual per company turnover of £0.57m. Given the above assumptions the average annual benefit is £1.15m (£0.57 * 2) and the total discounted **PV benefit is £9.5m** (over 10 years).
52. The annual turnover may vary significantly between trading companies.

² Information from existing FRA trading companies

53. No known benefits for suppliers. This option will maintain existing arrangements. There will be a wider diversity and choice in the delivery of public services and so consumers are likely to gain relative to the do nothing scenario.

Option C: Provide FRAs with powers to trade in any services which they are not under a duty to provide

54. The cost benefit analysis assumes that there will be three FRAs trading over the 10 year assessment period. Currently there are 30 FRAs with trading powers and two actually using those powers. Under Option C there will be 46 with trading powers so if we assume the same proportion that gives us three trading companies.

COSTS RELATIVE TO THE DO NOTHING OPTION

55. There will be the same costs of setting up and running trading companies as Option B (paras 48-49). With wider trading powers it may be more cost effective for FRAs to administer a trading company or join with another FRA or region to set this up.
56. As above the analysis currently conservatively assumes that the average annual per company costs are half those of the existing trading company that has provided evidence. So the analysis uses an average annual per company cost of £0.5m. Using this cost assumption and the assumption of three trading companies the annual cost is £1.5m (£0.5m * 3) and the total PV cost is £12.9m over 10 years. This estimate is conservative regarding the number of trading companies in the future. There could potentially be many more. The running costs of trading companies could vary significantly.

BENEFITS RELATIVE TO THE DO NOTHING OPTION

57. Similar benefits to Option B (para 51) though with more FRAs having access to extended powers there would be a wider potential for FRAs to generate income which would be distributed back into their budget.
58. No known benefits for suppliers. There will be a wider diversity and choice in the delivery of public services and so consumers are likely to gain relative to the do nothing scenario.
59. As in Option B the analysis currently conservatively assumes that the average annual per company turnover is half those of the existing trading companies that have provided evidence. The analysis uses an average annual per company turnover of £0.57m. Given the above assumptions the annual benefit is £1.7m (£0.57 * 3) and the total discounted PV benefit is £14.3m (over 10 years). This estimate is conservative regarding the number of trading companies in the future. There could potentially be many more.

Sensitivity analysis

60. Table 1 below show the sensitivity of total benefits, costs and net benefits to the changes in the assumed number of trading companies under the different options. The net benefit ranges are included in the Option B and C summary: analysis and evidence pages (pages 5 and 7).

Table 1: varying assumed number of trading companies relative to the do nothing				
	Assumptions	PV Benefit range (over 10 yrs)	PV Cost range (over 10 yrs)	PV Net benefit range (over 10 yrs)
Option B	1-3 trading companies more than the do nothing.	£4.8m to £14.3m	£4.3m to £12.9m	£0.5m to £1.4m
Option C	2-4 trading companies more than the do nothing	£9.5m to £19m	£8.6m to £17.2m	£0.9m to £1.8m

61. As noted above the analysis currently conservatively assumes that the average annual costs per company and the average annual turnover per company are half those of the existing trading company that has provided evidence. This company is seen as very effective. Table 2 shows the results when it is assumed that their per company figures are used as the average figures in the analysis.

Table 2: varying assumed average annual cost and turnover			
	Assumptions	PV Benefit (over 10 yrs)	PV Cost (over 10 yrs)
Option B	Average annual turnover £1.1m Average annual cost £1m	£19m	£17.2m
Option C	Average annual turnover £1.1m Average annual cost £1m	£28.6m	£25.8m

Race equality assessment

62. The trading power is a non-prescriptive enabling power and should not in itself have an adverse impact on race equality. FRAs are under a legal duty to eliminate race discrimination and to promote equality of opportunity and good race relations in carrying out their functions. When making use of the trading powers, as part of their legal duty, FRAs should consider whether there are any race equality considerations that need to be addressed.

Health impact assessment

63. The trading power is a non-prescriptive enabling power and should not in itself have an adverse impact on health issues. When making use of the trading powers FRAs should consider whether there are any adverse health impact considerations that need to be addressed.

Rural considerations

64. The trading power is a non-prescriptive enabling power and should not in itself have an adverse impact on rural issues. When making use of the trading powers FRAs should consider whether there are any adverse rural considerations that need to be addressed.

Small Firms' Impact Test (SFIT)

65. On the question of extending trading powers to FRAs, a Small Firms Impact Test (SFIT) was sent in May 2009 to a wide range of businesses including SMEs. Thirty-four responses were received from:
- twenty-six (76%) – organisations with 0-20 employees
 - three (9%) – organisations with 21-49 employees
 - four (12%) – organisations with 50-249 employees
 - one (3%) – organisation with 500+ employees.
66. Out of these responses the majority (94%) did not supporting the extension of FRA trading powers. The particular concerns were similar to the Industry responses to the consultation (para 27). There were also concerns that the market share would be reduced and that the public perception of the Fire and Rescue Service would give them a brand advantage. The respondents that supported extending FRA powers considered that they could improve their access to the Fire and Rescue Service market through this option.
67. The SFIT sought further evidence of the costs to businesses of current FRA trading and how these costs would be affected by extending FRA trading powers. It was noted that evidence of impact of existing trading was hard to come by however the majority considered that extending existing powers would have a negative impact on businesses in costs, prices being offered and potential redundancies.
68. Only two FRAs have set up a trading company so it is not possible to analyse whether they have had any specific impact on SMEs to date. Other factors such as the economic climate and a wide range of suppliers in the market may also have an impact on the market. In the past FRAs have shown little appetite to use their trading powers due the resources needed in setting up a trading company. This is unlikely to change in the immediate short term.

69. Whilst the trading powers mean that FRAs are potentially trading in competition with the private sector, various safeguards have been built in to the use of the powers. Safeguards include requiring authorities to adopt a genuinely risk-based approach, based on a sound business case prepared for the proposed trading activity and cleared by the authorities' executive.
70. The arrangements secure that FRAs are not able to distort markets through the provision of inappropriate subsidies to trading companies. In order to maintain a level playing field with local businesses, the powers to trade are subject to a requirement that trading must take place through a company within the meaning of Part V of the Local Government and Housing Act 1989. This means that surpluses on commercial operations under the power will be subject to taxation in the same way as other companies. FRAs like other bodies are subject to and must abide by competition law.

Competition assessment

71. A full Competition Assessment was carried out for the Regulatory Impact Assessment published to coincide with the introduction of the Local Government Bill 2003. The assessment concluded that such powers could lead to increased competition in the market though it was difficult to deduce the effects of such competition. Though there were potential greater efficiency gains for authorities through economies of scale there were also a number of potential adverse effects such as possible abuse of market power and conflicts of interest.
72. Many of the issues raised above, in relation to a local authority's assistance to a company, transparency, state aid and competition law, are addressed in the Trading Guidance. Such considerations would apply equally to a FRA as to a local authority.
73. In relation to FRA suppliers have been concerned about FRAs offering competing services in fire protection, consultancy and training services. It was felt that there were no current mechanisms in place to ensure such services were being offered at the market rate. The public perceive FRAs as the experts in certain areas and this could lead to an unfair advantage in the market. There were also issues over the potential conflict of role with FRAs acting as both the giver of advice and the enforcer.
74. In July 2006 the Chief Fire Officers' Association sent out a survey to all the FRAs in England. This asked for information on current and future trading activities. Information gained from this was inconclusive though some FRAs indicated that they were unlikely to carry on with trading activities in the future.
75. The power to trade is only exercisable through a company structure, which is subject to regulation in the same way as other commercial bodies (e.g. taxation). This helps ensure a level playing field with the private sector.

Enforcement, sanctions and monitoring

76. The trading power is an enabling power therefore there are no non-compliance issues. There are no sanction requirements for the trading powers. Any sanctions for non-compliance with the legislative duties under the trading legislation, or under any other legislation, will be a matter for the courts if necessary.
77. Having in place a business plan is a requirement of the legislation governing FRA trading and the business plan has to be approved by the Authority. Any failure to comply with the requirement to have an adequate business plan in place would be a matter for the Court and authority's auditor.
78. Any FRA trading company would be required to submit its accounts to Companies House by the end of January of each financial year. Future questionnaires and surveys to both suppliers and FRAs will be sent out on an annual basis to monitor the situation.

Race, disability and gender issues

79. The policy options proposed are not expected to have a disproportionate impact on individuals based on their race, gender or any disability.

Summary and recommendations

80. The recommendation is to provide FRAs with powers to trade in any services which they are not under a duty to provide (Option C).
81. The majority of responses to the consultation paper supported the extension of the power to trade to all FRAs in England. This approach ensures that FRAs have the same scope of access to trading powers as local authorities. There would be greater opportunity for FRAs to generate revenue which they could either invest in fire safety programmes or use to keep down council tax.
82. Removing powers (Option A) could have a negative impact on income streams for FRAs which could have a knock-on impact on tax payers. Extending the limited FRA trading powers only (Option B) would leave 30 out of 46 FRAs with access to restricted powers. This would mean that FRAs would not be in line with other local authorities with regard to trading powers and potential generation of income.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

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