

Circular number	16/2009	Date issued	13 March 2009
This circular is	For consultation	Respond by	27 April 2009
This circular is	Relevant to the National Framework		
Status	This circular provides an update on the transfer of ownership of New Dimension assets along with a further version of the Transfer Agreement for Fire and Rescue Authority comment.		

Transfer of Ownership of New Dimension Assets

Issued by:

Fay Sowerby
New Dimension Policy

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:

Summary

The consultation on the Transfer of Ownership Agreement for New Dimension assets back in late 2007 has been followed by considerable progress of the New Dimension capabilities including; the announcement of funding over the full CSR period made in July 2008; the commencement of the long-term maintenance contract covering all assets and establishment of an assurance framework and body managed through the FRS National Resilience Board. This Circular provides a Consultation Response document following the initial consultation along with a revised version of the agreement for further comment.

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Transfer of Ownership of New Dimension Assets

1.0 Background

1.1 The New Dimension project, 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 Chemical, Biological, Radiological and Nuclear (CBRN) materials, collapsed or unstable structures, and to displace large volumes of water.

1.2 Although New Dimension vehicles and equipment are currently owned by CLG, there is no option for the Department to continue to own them for the medium term. There are a number of alternatives for the future ownership of the New Dimension assets but the one which makes the most sense for the FRS is that ownership of these new resilience assets would be transferred to those FRSSs which host them.

2.0 Consultation Response to 51/2007

2.1 Through Fire Service Circular 51/2007 (November 2007), CLG consulted Fire and Rescue Authorities (FRAs) on a draft Transfer of Ownership Agreement for the New Dimension assets. A total of 22 FRA responses were received along with comments from CFOA, LGA, the Fire Lawyers Network and other stakeholder bodies. This Fire Service Circular provides a Consultation Response following FRA replies to FSC 51/2007, along with a revised Transfer of Ownership Agreement for further comment by FRAs and an update on the timetable for the transfer of the assets.

2.2 It is worth re-iterating the benefits deriving from both the transfer and the long-term strategy for the New Dimension project overall for both FRSSs and FRAs:

- It will ensure that New Dimension capability can be fully integrated into FRS core business and from an FRA perspective will unite ownership with use of the capability, providing FRAs with control over the assets they host.
- Provision of a maintained and fully operational fleet of vehicles and equipment through CLG's procurement of a £100m long-term maintenance contract with Vosper Thornycroft Critical Services (VTCS). This maintenance contract commenced in October 2008 and we understand that feedback so far has been strongly positive.
- Access to free, comprehensive future assurance for the New Dimension capabilities. The Department appreciates that New Dimension provides national capabilities and hence will require future overarching governance once the assets have transferred to individual FRAs. On this basis, CLG has funded a long-term Assurance Body (the FRS National Resilience Board) led by CFOA, which will ensure that the capabilities are fit for purpose, do not degrade over time, continue to be interoperable between FRAs whilst also providing specialist guidance and advice, access to a national training programme and a fully managed minor asset refresh programme.

- 2.3** Responses to the original consultation on asset transfer mainly concerned FRAs' queries about future funding, in advance of an assurance from the Department. Among other issues raised were the proposed transfer of funding into the Revenue Support Grant (RSG) and the accounting treatment.
- 2.4** In regard to future funding, FSC 36/2008 (July 2008) provided confirmation of the funding allocation for the New Dimension project for the CSR07 period. In line with the new burdens principle, CLG recognised that FRAs need continued funding to support the New Dimension capabilities. On this basis, in summer 2008 Ministers announced continuation funding of £80 million between 2008/09 and 2010/11. As part of this package, in December 2008, CLG provided funding to FRAs of £19.4m and a further grant containing the remaining funding for this financial year is expected in the next few weeks.
- 2.5** On the question of mainstreaming New Dimension grants into the Revenue Support Grant, CLG has previously indicated that it is looking to do this in line with agreed CLG/LGA policy, but when there is a clear history of actual costs to take account of. As outlined in FSC 32/2007 (July 2007), for the current CSR period we intend to continue funding through specific Section 31 Grants. Further consideration of this will be through the formula grant review in the normal way, when FRAs and LGA will have full opportunity to raise any remaining concerns.
- 2.6** With regard to the accounting treatment for the transfer of assets, FRA accounts should reflect the net book values of the assets being transferred as calculated by CLG in column four of Schedule 1 of the Agreement. The net book values of the assets are based upon modified historic cost adjusted for depreciation in accordance with CLG's accounting policy. CLG calculates depreciation on a straight-line method in accordance with Financial Reporting Standard (FRS) 15. On this basis we have therefore amended the Transfer Agreement to take account of this advice accordingly. Furthermore, given that the transfer of assets is a transfer of function, the Department has removed the reference to monetary consideration within the Transfer Agreement which would wrongly imply it was a sale of assets and hence undermine the basis for it being a transfer of function. Again, this has been amended in the Agreement.
- 2.7** A comprehensive list of all the comments and questions raised by FRAs in response to the original consultation on the Transfer of Ownership Agreement are provided in the Consultation Response document accompanying this Circular, along with the responses to each query from CLG.

3.0 Revised Transfer Agreement & Timetable for Transfer

- 3.1** Following the comments already received by FRAs on the draft Transfer of Ownership Agreement we have amended the document, though its content remains generally similar to the previous version.
- 3.2** We therefore invite FRAs to review the revised agreement again (reading in conjunction with this the Consultation Response document) and indicate whether they are content in principle to sign up to the proposal for the transfer of the assets by **27 April 2009**. This, of course, is subject to any remaining minor queries or revisions to the agreement.

- 3.3** Following any further FRA comments, we then aim to finalise the Agreement and seek formal sign-up from FRAs by the summer recess, with a view to setting a date for formal asset transfer of 1 October 2009. We understand that this will allow time for FRAs to take the issue through their Committee structures.

Fay Sowerby
New Dimension Policy

Consultation Response to Fire Service Circular 51/2007 on the New Dimension Transfer of Ownership Agreement

Subject	FRA issues raised from the Consultation	CLG Response
Specific Drafting Issues	1. Clause 1 (Definitions) contains no definitions.	Amended to read 'Interpretations'
Specific Drafting Issues	<p>2. Clause 2 (Transfer) the Department should include:</p> <p>i) Whether any assets dependent upon programmes & systems in respect of intellectual property rights not in ownership of CLG, or cannot be transferred to the FRS.</p> <p>ii) It has full legal and equitable title to the assets prior to transfer.</p> <p>iii) That no person has commenced, threatened to commence any action that would be materially inconsistent with this warranty e.g. a third party may sue if he claims to have legal interests in the assets.</p> <p>iv) That there are no encumbrances (e.g. mortgage, charge, third party interests etc) over the assets and no agreement by the Department to create any.</p> <p>v) Whether the assets are the subject of no other</p>	<p>i) The Department confirms that it will retain ownership of all intellectual property rights it holds in association with New Dimension equipment as detailed in Clause 2.1.1 of the Transfer Agreement.</p> <p>ii) – iv) Agreed, a new clause 2.2 has been inserted to cover these points.</p> <p>v) Currently New Dimension equipment is subject to other contracts although these will have ended by the proposed transfer date (1 Oct 09) and hence a clause covering this will be added. This however will exclude the Terms of Access under the LTCM Maintenance Contract which FRAs will be obligated to sign up to in line with the provisions of clause 7.1.</p> <p>vi) As mentioned above the Transfer Agreement has a condition that in signing up to the transfer, each FRA will themselves enter into a Terms of Access agreement whereby they will access the services provided by the maintenance contractor (VTCS) in conjunction with the preferred commercial Terms and Conditions of the contract. It is a contractual obligation under this contract that</p>

Subject	FRA issues raised from the Consultation	CLG Response
	<p>contracts.</p> <p>vi) That the assets are fit for purpose and in full working order (this was also requested under Schedule 3)</p>	<p>equipment and vehicles are maintained so they are fit for purpose. As such, there is no need to include this clause within the Transfer Agreement.</p>
Specific Drafting Issues	<p>3. Clause 2.1.1 – CLG would need to inform FRS's in advance of the extent to which insurance policy rights would transfer to it.</p>	<p>Agreed. Information on rights or claims against third parties on the equipment in reference to insurance policies will be provided to relevant FRAs prior to transfer.</p>
Specific Drafting Issues	<p>4. Clause 3.1 (Consideration) the term 'Assets' should be changed to read either the 'New Dimension Assets' or, more accurately, the 'Equipment'.</p>	<p>It is the Departments view that the term 'Assets' is appropriate.</p>
Specific Drafting Issues	<p>5. Clause 5 – Liabilities:</p> <p>i) Request to include an indemnity on all claims, demands, actions or costs arising before but made after the Time of Transfer</p> <p>ii) Furthermore, some FRAs have suggested changing drafting of Clause 5 to read:</p> <p>'Nothing in the agreement shall pass to the FRA, or shall be construed as acceptance by the FRA of, any liability, debt or other obligation of the Department (whether accrued, absolute,</p>	<p>i) & ii) The Department agrees that it would be unreasonable for FRAs to pick up liabilities, obligations etc. arising prior to the transfer date. However, we believe that the existing wording in the Transfer Agreement is sufficient to deal with this matter. Through general Departmental policy, we are unable to provide an indemnity as described.</p> <p>Where there is any liability arising out of this agreement, CLG undertakes, acting in good faith, to consider how that liability should be met and to act in a manner consistent with a reasonable public authority.</p>

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	<p>contingent, known or unknown) for anything done or omitted to be done before the Time of Transfer in the course of or in connection with the Equipment and the Department shall:</p> <p>a) indemnify and hold the FRA harmless against any and all obligations, liabilities and any action, award or other legal recourse, complaint, cost, debt, demand expense, fine, liability, loss, outgoing or proceeding arising there from; and</p> <p>b) perform any obligation falling due for performance or which should have been performed before the Time of Transfer.”</p>	
Specific Drafting Issues	<p>6. Clause 6 (Further Assurance) concerning request for documentation. Replace ‘the department considers necessary’ with ‘the Department or the FRA reasonably considers necessary’. This should not be limited to those considered by CLG also reasonably considered by the FRA.</p>	<p>FRAs will wish to be aware that CLG has already provided the vast majority of necessary documentation associated with New Dimension project to the CFOA-led Assurance Body (the FRS National Resilience Board) and has, and will continue to, respond to any further requests from them for further documentation or action on outstanding issues. Where FRAs require documentation associated with New Dimension they are able to request this from the Assurance Body. Given this, the Department considers the current wording of clause 6 is sufficient as it is.</p>
Specific Drafting Issues	<p>7. Clause 7 (Obligations) section 7.5 refers to ‘Interoperability’ – this is a key term but it is not defined in the Agreement.</p>	<p>Agreed. The Transfer Agreement has been amended accordingly. (This is now clause 7.4)</p>

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		[Nb: Clause 7 has also been updated following commencement of the New Dimension maintenance contract. We have therefore deleted the previous clause 7.4 which referred to interim maintenance arrangements].
Specific Drafting Issues	<p>8. Schedule 3 (Obligations of the FRA):</p> <p>i) Section 1 to make clear that the approval should not be unreasonably withheld. In addition a time period of responses by CLG should be included.</p> <p>ii) Section 1.1 is too restrictive. FRS requires some flexibility to be allowed to meet local needs.</p> <p>iii) Section 4 has a new obligation to notify the FRS Coordination Centre within one hour.</p> <p>iv) Section 3 amend “best endeavours” to “reasonable endeavours.”</p> <p>v) Section 5 – Reference to ‘maintenance’ is confused & illogical.</p>	<p>i) Agreed and amended accordingly, however the time necessary to respond would be dependent on the issue raised. Therefore the wording now refers to approval not being unreasonably withheld by the Department and that the Department will respond to any request as soon as reasonably possible.</p> <p>ii) The FRS, need assurance that the equipment remains interoperable at all times hence this reason for this clause. The process for managing change to specifications, procedures etc. will be managed by the Assurance Body, on behalf of the FRS, and decisions on such issues will be made collectively by them or referred to CLG where necessary.</p> <p>iii) This is not a new obligation and is set out already in Circular 30/2006 (June 06).</p> <p>iv) CLG’s view is that the FRS should use best endeavours, as it is currently doing, to ensure it maintains the necessary level of trained and competent staff to operate the New Dimension equipment both currently and once the transfer agreement is enacted.</p>

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		v) Agreed. The word 'maintenance' under section 5 has been deleted (but for clarity it remains in 5.1 and 5.2).
Specific Drafting Issues	9. Request from several FRSs to add a clause on force majeure.	<p>The Department is unsure in what context FRAs have requested a clause on force majeure. However from CLG's perspective, there is a hazard in putting in such a clause given that New Dimension capability has been provided to respond to major national emergencies often caused by force majeure incidents. Inserting such a clause would detract from the FRAs responding to this type of incident.</p> <p>Nevertheless, we have put in arrangements through the Assurance Body for dealing with write-off of equipment (which may have been caused as a result of force majeure) under the circumstances where it cannot be replaced in the short-term. Those arrangements are that the Assurance Body work with FRSs to live round losses, if necessary moving equipment or finding other solutions to keep the capability fit for purpose in the most reasonable manner.</p>
Specific Drafting Issue	10. Need a clause setting the circumstances in which the parties can terminate and what the consequences of termination are (e.g. return of the equipment? Or can FRA's opt to pay to keep the Equipment?)	The agreement is a transfer of function and is not intended to be some temporary arrangement. On signing up to the Transfer Agreement, FRSs will accept ownership of the assets and the responsibilities as set out within the Agreement.
Transfer of function	11. FRAs have requested a further explanation on why the transfer of assets is considered a	As noted in Circular 51/2007 (Nov 07), transfer of function is the correct terminology; alternatives such as simply

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	transfer of function; what exactly is being transferred under the Agreement and if there is an issue relating to VAT, for this to be explained further.	transfer of assets would suggest that FRSs were carrying out a service on behalf of CLG, which is clearly not the case. Information on transfer of functions can be found in the HM Treasury document: "Supply Estimates: A Guidance Manual 2007" para 2.43-2.49. Weblink below. http://www.hm-treasury.gov.uk/d/estimates_manual011007.pdf
Insurance	12. Provision of 3rd party insurance – who insures the assets against what risks and over what periods? If policies overlap, this could risk invalidating both policies and equally, would want to avoid a gap in insurance cover. What are the funding implications if FRS want appropriate cover above minimum level.	<p>Until the transfer is agreed CLG will continue to provide 3rd party insurance for the ND vehicles. After the transfer, CLG intend to fund this directly to FRAs. We will make clear at what point CLG insurance will cease (presumably the date of transfer) in sufficient advance that FRAs can make their own arrangements to insure.</p> <p>The stakeholder view was that some FRAs self-insure and would not wish to be obligated to provide comprehensive insurance. On this basis we are providing funding to cover the minimum statutory legal requirement of 3rd party insurance only for the vehicles (not the equipment where there is no legal requirement). Any coverage above this will be at the discretion of each individual FRA.</p>
Warranties	13. Request for confirmation over whether there is a clear legal ability to transfer the existing warranties.	There are very few warranties for New Dimension assets still in operation but where they are still active, they are managed via the maintenance contractor (VTCS) on the Departments, and hence the FRAs, behalf. It would not be feasible to transfer these warranty rights over to 46

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		<p>individual FRSs.</p> <p>In terms of long-term manufacturing defects, CLG takes the view that, as the procurement agent for the New Dimension assets, it should retain responsibility for managing the defects. In the first instance, where an FRA believes there may be a fundamental concern on a vehicle or equipment type they should inform the Assurance Body accordingly. Taking in to account advice from the Assurance Body and our own Departmental advice, CLG will then take the issue forward as necessary.</p>
Liabilities	14. Clarity on liabilities – would not accept a transfer of liabilities in excess of the period for which funding is guaranteed.	<p>This transfer of function is in line with all transfer of functions from central government to local authorities. Central government funding to local authorities is decided by spending reviews and annual settlements on which authorities are consulted.</p>
Liabilities	15. FRAs have asked what liabilities are associated with CLG for a failure beyond the FRS/FRA control i.e. manufacturing defect or commonly adopted procedural defect that causes accident or injury.	<p>Long term manufacturing defects would be covered via warranty. (see 13 above).</p> <p>Procedures surrounding use of the New Dimension equipment have been developed by the Department, with full involvement of FRS practitioners. In future it is intended that where procedures are revised or updated (via the Assurance Body) resulting guidance, where applicable, would be issued through CLG's national operational guidance process.</p>

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Maintenance Contract and Terms of Access	16. Details of these contracts are not available to FRAs.	A copy of the Terms of Access will be provided to FRAs via the Fire Lawyers Network in the next few weeks.
Maintenance Contract and Terms of Access	17. The contract length (16years) is too long. Is there a break clause?	Yes there are break clauses within the LTCM maintenance contract. These can be exercised by Firebuy – termination for cause (i.e. breach of contract) and termination without cause which can be enacted after three years of the contract being in operation with expiry not less than 12 months after notification. Where an FRS has an issue with the performance of the maintenance contractor this should be raised with Firebuy, as the contract managers.
Maintenance Contract and Terms of Access	18. What is the contractor's responsibility for training, crewing, consumables and routine asset refresh?	The maintenance contractor has no responsibility for training or crewing. In terms of consumables, whilst CLG owns the New Dimension assets all consumables, (in line with those outlined in Circular 52/2008, Oct 08) should be requested by FRSs via the maintenance contractor, which CLG will pay for directly. Once the transfer is enacted, CLG will provide funding to FRSs for consumables and it will be for FRSs themselves to decide whether it wishes to continue to buy the consumables from the maintenance contractor or make their own arrangements. For asset refresh it will be for the Assurance Body to decide how and where to purchase any new/additional equipment.
Maintenance Contract and Terms of Access	19. Question over whether it is possible for those Brigades with PFI contracts to have their New Dimension equipment asset managed/owned	No. The Transfer Agreement has a condition that in signing up to the transfer, each FRA will themselves enter into a Terms of Access agreement whereby they are obligated to

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	by their contractor.	access the services provided by the maintenance contractor (VTCS) in conjunction with the preferred commercial Terms and Conditions of the contract. However, working arrangements have been put in place to ensure that where a PFI contract exists within an FRA, that VTCS, the FRA and PFI Contractor are agreed on the protocol of responsibilities at the defect reporting stage to ensure that no gaps exist in KPI performance for either party. There is also a clause in Schedule 3 of the Transfer Agreement that prevents FRAs from selling or divesting interest of the New Dimension equipment to any third-party.
Maintenance Contract and Terms of Access	20. Can FRAs still opt to maintain the Equipment in-house?	No. (as 19 above) On transfer, FRAs will be obligated to use the VTCS contract for maintenance and repair of the assets. However we have encouraged VTCS to use the facilities of the FRS where feasible to do so and they have already successfully employed the services of some FRS workshops. Expressions of interest are currently being invited from FRSs who may wish to have their workshop facilities considered for use by VTCS. Visits to workshop locations will commence this month.
Maintenance Contract and Terms of Access	21. Will CLG fund the cost deriving from the maintenance contract in full?	Through Circular 52/2008 (Oct 08) CLG has committed to paying the fixed costs of the maintenance contract relating to routine maintenance and servicing to ensure that the equipment and vehicles are ready to respond to a major (level four) incident. Whilst CLG have encouraged FRSs to also use this equipment in response to their own day to day

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		<p>business, it is not for CLG to fund the repair or replacement of equipment used or damaged in local incidents where FRSs choose to use it. Consistent with maintenance and repair arrangements for FRAs' own vehicles and equipment more widely, it will be expected that where damage to New Dimension assets occurs during a local incident or as a result of an act or omission by an employee of an FRA or some person or body acting on the FRA's behalf, that the costs of remedy or repair should be borne by that FRA. Based on the experience of New Dimension to date and given the generally good governance of the FRS, it is unlikely that charges of this nature will be frequent or of a substantial amount per FRA.</p> <p>On an exceptional basis, CLG has agreed to cover the cost of unfair wear and tear up to 1 April 2009, although we have reserved the right to recharge an FRA where the case involves substantial or disproportionate costs, or where costs are of an unnecessarily repetitive nature. CLG is developing a policy of recharging FRAs for the costs associated with unfair wear and tear which will come into force this year.</p>
Maintenance Contract and Terms of Access	22. What constitutes unfair wear and tear?	This is covered in detail in Circular 52/2008 (Oct 08).
Maintenance Contract and	23. Are Firebuy costs for contract managing the maintenance contract covered by CLG?	Yes. CLG are paying contract management costs directly to Firebuy.

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Terms of Access		
Maintenance Contract and Terms of Access	24. How will the contracts be monitored? Will there be periodic benchmarking?	<p>Firebuy, as the contract manager, monitors and measures VTCS's performance of the services required under the contract, using a robust suite of KPIs. Comprehensive Management Information is provided to Firebuy on a monthly basis and is disseminated in various forms from the Assurance Body on down to the regional forums.</p> <p>In contractual terms, benchmarking will take place every four years throughout the life of the contract. However, Firebuy reserves the right to carry out a benchmarking exercise outside that regime.</p>
Asset Refresh	<p>25. Questions on asset refresh including confirmation of who decides when there will be a 'routine asset refresh' or a 'major refresh' and request that operating & replacement costs of New Dimension vehicles & equipment be fully funded by CLG.</p> <p>26. What are the interim arrangements to replace assets when they come to the end of their life?</p>	<p>In terms of routine asset refreshment such as small items of equipment which require frequent refresh (i.e. IT/communications), CLG are providing funding to the Assurance Body to manage this (around £1.5m pa once the New Dimension capabilities have been fully transitioned over). It will be for the Assurance Body to take the view on what refresh is required each year.</p> <p>For major asset refresh, (where the equipment/vehicles become unfit for purpose over time, are no longer operationally viable or more technologically advanced equipment becomes available on the market), we expect the Department to consider advice from the Assurance Body about every five years over the 16 year period, in the context of the relevant Spending Reviews. However, no</p>

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		<p>commitment can be made to decisions beyond this spending review at this time. In the meantime, the Assurance Body will arrange for interim arrangements between FRSs to cover any equipment losses until the next major refresh.</p>
Funding	<p>27. Queries over the level of 'New Burdens' funding support to be provided to FRAs to enable continuing provision of New Dimension capability in the long-term, whether the proposed funding will meet the costs incurred and whether in future the funding will fall away.</p>	<p>In July 2008, Ministers announced funding of £80m over the next three years relating to New Dimension. Circular 36/2008 (July 08) detailed the New Dimension Section 31 grants that are planned to continue for the current CSR period:</p> <ul style="list-style-type: none"> o 2008/09 - £23.9m o 2009/10 - £27.8m o 2010/11 - £28.3m <p>In December 2008 Govt provided funding to FRAs of £19.4m out of the £23.9m proposed. A separate grant containing the remaining funding for this financial year is expected shortly.</p> <p>Government remains committed to the new burdens principle and that where a new burden is imposed on FRAs, this will be funded accordingly.</p>
Funding	<p>28. If Section 31 grants are subject to Ministerial and Treasury approval – an FRA risks signing the agreement before such approval is given and potentially having to perform it unfunded?</p>	<p>Section 31 Grants are merely a mechanism to pay money to FRAs. Ministers have announced the funding allocation for the full CSR period, in response to FRAs' concerns and in line with wider Government policy to provide 3-year settlements.</p>

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Funding	29. In transitioning long-term funding from Section 31 grants to the Revenue Support Grant (RSG), how will this affect FRAs?	<p>CLG has previously indicated that it is looking to put New Dimension funding in the RSG formula in due course in line with agreed CLG/LGA policy, and when there is a clear history of actual costs to take account of.</p> <p>It remains our intention to consider this again in the next formula grant review, when FRAs and LGA will have full opportunity to raise any remaining concerns.</p> <p>Whilst we endeavour to pay larger S31 grants about mid-financial year so authorities neither benefit nor lose out from their timing, clearly any future move to RSG would remove this issue as well as giving authorities further assurance over long-term funding.</p>
Funding	30. Who funds road fund licence renewals – are they within the new burden scope?	The Department presumes this refers to the tax disks? If so, there is no cost associated with taxing this type of emergency vehicle.
Accounting Treatment	31. FRAs would like guidance over accounting treatment of assets, in sufficient time to allow the accounts to be completed correctly?	With regard to the accounting treatment for the transfer of assets, FRA accounts should reflect the net book values of the assets being transferred as calculated by CLG in column four of Schedule 1 of the Agreement. The net book values of the assets are based upon modified historic cost adjusted for depreciation in accordance with CLG's accounting policy. CLG calculates depreciation on a straight-line method in accordance with Financial Reporting Standard (FRS) 15. We have therefore amended the

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		<p>Transfer Agreement to take account of this advice accordingly.</p> <p>Furthermore, given that the transfer of assets is a transfer of function, the Department has removed the reference to monetary consideration within the Transfer Agreement which would wrongly imply it was a sale of assets and hence undermine the basis for it being a transfer of function. Again, this has been amended in the Agreement.</p>
Accounting Treatment	32. Request for a current valuation of the assets with a certificate including the assessment of residual life and value.	CLG has already calculated the current net book value of all the New Dimension assets, however the actual value provided to the FRAs will be dependent on the actual time of transfer. This, and any other accounting information required, will be provided to FRAs in sufficient time prior to transfer being enacted.
Governance	33. Several FRAs requested further information on the role of the Assurance Body; how this group will interact and influence participating services and whether they have the necessary authority to undertake the roles envisaged for them.	<p>As part of the FRS taking on responsibility for New Dimension, CLG is providing new burdens funding to ensure the New Dimension capability remains fit for purpose and interoperable. Previously CLG had undertaken this role but, in line with our long term strategy, we are transitioning this over to the FRS directly.</p> <p>However the Department recognises that this function cannot be undertaken by individual FRS in silo and that there needs to be a collective oversight on a national basis. Given this, CLG has facilitated a mechanism whereby this</p>

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		<p>function can be managed strategically by the CFOA-led Assurance Body.</p> <p>The aim of the Assurance Body is to provide operational assurance that the New Dimension capabilities remain fit for purpose and can be deployed consistently across national and regional boundaries, including managing and monitoring operational practices, procedures and technical advice on HVP, CBRN, USAR and Command & Control capabilities, and the associated operational IT, communications and training, asset refresh and any required siting or re-siting of assets. The Assurance function is supported by the National Resilience Advisory Team (N-RAT), and an Assurance Body representative also attends meetings between Firebuy and the maintenance contractor (VTCS) to support effective management of that contract through representing the collective customer interest.</p> <p>So far the body, in its interim state as the Transition Board, has worked well from our perspective and, we understand, from the FRS's, providing a positive and pragmatic approach to issues. The FRSs hosting each New Dimension capability sit on an operational management group, and the Chairs of each of these groups sits on the Assurance Body as the capability lead, so the body is well-placed to understand and represent FRS operational needs and broader FRA concerns. Should FRSs or FRAs, become concerned about the operation of the Assurance</p>

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		<p>Body they are able to raise their issues at the relevant operational management group, and where concerns cannot be resolved there, they can be taken forward to the parent Assurance Body itself. The Assurance Body is by nature consensual with the FRS and although it currently broadly follows the structure used for the New Dimension project it will of course be for the FRAs collectively to decide whether this remains appropriate in the longer-term.</p>
Governance	<p>34. FRS concern over the reduction of Regional and Assistant Co-Ordinator posts and the need to retain some form of regional co-ordination, otherwise this could undermine interoperability.</p>	<p>This issue has been overtaken by establishment of the CFOA-led Assurance Body, whereby Government is providing funding of £2.24m pa to maintain regional staffing and a central secretariat to ensure that New Dimension capabilities are at all times kept interoperable and fit for purpose between the FRAs.</p>
Generic	<p>35. At the end of the Transfer of Ownership Agreement is it for each fire and rescue authority to determine what it does with the equipment at that point of time?</p>	<p>Discussion will be undertaken with FRAs near the time of expiry of the transfer agreement.</p>
Generic	<p>36. Concerns regarding acceptance of financial liability at a local level for assets whose nature and use is directed at national level</p>	<p>Once the ownership of New Dimension vehicles and equipment has been transferred to FRAs the use of these assets at regional or national level will be on the same basis as any locally procured FRA asset. Deployment of FRA assets to other FRAs as a result of a serious incident is covered by the National Mutual Aid Protocol as signed by every FRA and outlined in Fire Service Circular 75/2006</p>

Subject	FRA issues raised from the Consultation	CLG Response
		(Dec 06).
Generic	37. Would one FRA be liable for changes made in other authorities?	Changes to the specification/procedures for New Dimension assets or alterations to the equipment itself can only be undertaken after strategic consideration. This will be undertaken by the Assurance Body on behalf of the FRAs, and, at a strategic level, CLG. It is expected that any changes approved by the Assurance Body on New Dimension capability be implemented in all FRAs, subject to usual financial/operational considerations.
Generic	38. Further clarification of the staff numbers required to enable the equipment to be deployed.	CLG has provided all New Dimension capabilities with a model for the number of crew required to operate the equipment (i.e. USAR Team has an initial deployment of 10 crew). It is however, for FRAs to consider whether they are able to safely and effectively crew the equipment under a different model but are still able to provide the necessary outputs.
Generic	39. A clearer understanding of support available from the centre to maintain the national capability will be needed with regard to training and exercising, technical refreshers, co-ordination of SOPS and resolution of safety events.	All these issues are being dealt with by the work of the Assurance Body – see Q33 above.

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AGREEMENT

BETWEEN:

**(1) THE SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT**

-and-

(2) [FRA]

An agreement for the transfer of
the New Dimension assets and functions

Contract number:

MEPB
DCLG Legal Directorate
Eland House
Bressenden Place
London
SW1E

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THIS AGREEMENT is made on

BETWEEN

- (1) The Secretary of State for Communities and Local Government acting through the Department for Communities and Local Government of Eland House, Bressenden Place, London SW1E 5DU (“**the Department**”); and
- (2) [FRA] of (“**the FRA**”).

BACKGROUND

- (1) The Department has for some time maintained and kept available for use assets for the purposes of the New Dimension Programme in England (“the New Dimension Assets”).
- (2) In accordance with Government policy, the Department wishes to transfer the ownership of the New Dimension Assets to the English Fire and Rescue Authorities. The specific equipment (being part of the New Dimension Assets) to be transferred to the FRA is listed in the Schedule 1 (“the Equipment”).
- (3) The FRA has agreed with the Department with effect from 00.01 hours on [...] (“ the Time of Transfer”) to accept the transfer of the Equipment in consideration of the assumption of the obligations ('the Obligations') set out in this Agreement in each case on the terms and conditions set out.
- (4) The transfer of the Equipment from the Department to the FRA shall be treated as a “transfer of function”.

NOW IT IS AGREED as follows:

1. Interpretation
 - 1.1 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.
 - 1.2 The headings are inserted for convenience only and shall not affect the interpretation of this Agreement.
 - 1.3 Save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation, as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or

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without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.

1.4 Any reference to a Schedule is a reference to a Schedule to this Agreement.

2 Transfer

2.1 The Department agrees to transfer ownership and the FRA agrees to accept that transfer with effect from the Time of Transfer the Equipment including without limitation all rights and claims of the Department against third parties with respect to the Equipment (including without limitation all rights in connection with insurance policies held by the Department subject to the consent of the relevant insurance companies) so far as the Department can assign the same BUT (for the avoidance of doubt):

2.1.1 excluding all intellectual property rights owned or used by the Department in relation to the Equipment; and

2.1.2 excluding the equipment of the Department set out in Schedule 2 ('the Retained Equipment') including all property assets rights and liabilities relating to the Retained Equipment whether or not such Retained Equipment is incorporated in to or attached to the Equipment).

2.2 The Department warrants that:

2.2.1 it has legal and equitable title to the Equipment prior to the Time of Transfer;

2.2.2 no person has commenced or to its knowledge, threatened to commence, any legal proceedings in relation to the Equipment which would be materially inconsistent with the transfer of ownership of the Equipment under clause 2.1; and

2.2.3 there are no encumbrances in respect of the Equipment or agreement by the Department to create such an encumbrance.

3 Consideration

3.1 The consideration for the [Assets] shall be the assumption by the FRA of the obligations set out in this Agreement.

3.2 The accounts of the FRA shall reflect that the value of an item of the Equipment listed in the first and second columns of Schedule 1 is the amount specified in relation to that item in the fourth column of Schedule 1.

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DRAFT**4 Completion**

4.1 Completion of the transfer shall take place at the Time of Transfer by which time the Department shall have delivered the Equipment to the FRA.

4.2 Risk and property in and title to the Equipment shall pass to the FRA at the Time of Transfer.

4.3 The Department shall at or as soon as practicable after the Time of Transfer deliver to the FRA all transfers assignments and novations (if necessary) in connection with the Equipment together with the relevant documents of title (as detailed in schedule 4) necessary to give effect to this Agreement.

5 Liabilities

The FRA agrees to accept the transfer of the Equipment on the terms of this Agreement but the Department shall retain and discharge all debts owing by the Department in respect of the Equipment and all other liabilities of the Equipment subsisting as at the Time of Transfer.

6 Further Assurance

The Department agrees and declares that it will after and notwithstanding completion of the transfer under this agreement execute and deliver any other documents and take any other steps that the Department considers necessary from time to time to vest in the FRA (or as it may direct) the Equipment.

7 Obligations

7.1 Firebuy Limited (Company number 5568715) ("Firebuy") (or any successor body thereof) has appointed a Prime Contractor under a prime contract for maintenance and management services in respect of the Equipment. The FRA shall contract for the maintenance and management services in respect of the Equipment from the Prime Contractor by entering into the relevant "Terms of Access" pursuant to the Access Agreement between the FRA and Firebuy. The FRA shall comply in all material respects with its obligations under the Terms of Access. The FRA agrees with the Department that, in the event of a breach of this term, specific performance would be appropriate remedy to be granted by the court.

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7.2 Subject to the Department complying with its obligations contained in this Agreement the FRA shall during the period of 16 years commencing at the Time of Transfer (“the Term”), comply with the obligations on its part set out in this Agreement and in Schedule 3.

7.3 The FRA shall be liable for all costs relating to the maintenance and management of Equipment under the Terms of Access.

7.4 The FRA agrees to maintain national interoperability of the Equipment by ensuring that the Equipment remains capable of being used or operated in the same way as other New Dimension Assets owned by other FRAs.

8 Costs

Each party shall bear its own costs of and incidental to the preparation and completion of this Agreement and the formation and registration of the transfer of the Equipment to the FRA.

9 Governing law

This Agreement shall be construed in accordance with and governed by the laws of England.

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Schedule 1: The Equipment

[a breakdown of all New Dimension equipment by each FRA has been set out in Fire Service Circular 37/2007, which has subsequently been agreed or amended accordingly by FRSs. This data will be incorporated in to the table below for each FRA in due course]

Asset	Quantity	Vehicle Number	Net Book Value (Modified Historic Cost valuation) ¹
Prime Mover			
Incident Response Unit			
Fork Lift Truck			
Fork Lift Training Rigs			
Detection, Identification, & Monitoring Unit			
Re-robe module			
Dis-robe module			
Urban Search & Rescue Module 1			
Urban Search & Rescue Module 2			
Urban Search & Rescue Module 3			
Urban Search & Rescue Module 4			
Urban Search & Rescue Module 5			
High Volume Pump: Hydrosub			
High Volume Pump: Hose Box			
Enhanced Command Support Vehicles			

Detailed descriptions of each asset can be found in the agreed annexes entitled [xxxxxxx] bearing reference number [xxxxxxxxxxx]

¹ The net book values of the assets are based upon modified historic cost adjusted for depreciation in accordance with CLG's accounting policy. CLG calculates depreciation on a straight-line method in accordance with Financial Reporting Standard (FRS) 15. Asset lives used by CLG were as follows:

- motor vehicles - in the range of 5 to 20 years;
- plant & machinery – in the range of 3 to 10 years

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Schedule 2: The Retained Equipment

[Currently the Firelink related equipment, detailed description of such to be added]

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Schedule 3

Obligations of the FRA

1. The FRA shall not without the prior written approval of the Department (the Department agrees that any approval by the Department is not to be unreasonably withheld and any request is to be responded to by the Department as soon as reasonably practicable):
 - 1.1 change the specifications (amounts, technology etc.), stowage arrangements, their training or operating procedures, or relocate the Equipment;
 - 1.2 carry-out repairs and/or maintenance to the Equipment or engage or contract with any other person to undertake the same save in accordance with Clause 7.1, or save where Firebuy and the Prime Contractor appointed by Firebuy in accordance with Clause 7.1 have agreed that the FRA can undertake such repairs and/or maintenance;
 - 1.3 sell or otherwise divest any interest in the Equipment to any third-party; and/or
 - 1.4 deploy the Equipment overseas without first decommissioning the Retained Equipment.
[Further Firelink related conditions to be added].

- 2 The FRA shall maintain the Equipment so that at all times it is fit for purpose including meeting the needs of a wider than local emergency for which it may be deployed under the [National Mutual Aid Protocol] or the [Emergencies Order], and so that in all material respects it meets the technical design specification at the Time of Transfer (as amended in accordance with paragraph 1.1 above)

- 3 The FRA shall use best endeavours to retain a level of competent staff such that the Equipment may be deployed in accordance with paragraph 2 above.

- 4 The FRA shall maintain the status of the Equipment on the [RCC network] when operational in like manner to any other asset owned by the FRA. Until the [RCC network] is operational, the FRA shall report the status of the Equipment to the [Fire and Rescue Service National Coordination Centre (FRSNCC)]. The FRA shall notify the [FRSNCC] promptly:
 - 4.1 whenever the Equipment becomes operationally unavailable and is expected to remain so for more than four hours, within an hour of the defect occurring;
 - 4.2 on changes in location of and contact numbers for the Equipment;
 - 4.3 when the Equipment is deployed to an incident. The FRA also should notify the [FRSNCC] as soon as the Equipment becomes operationally available again within one hour;

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and is required to complete and forward to the [FRSNCC] at the end of each month a Monthly Validation Form.

- 5 For the avoidance of doubt, the obligations of the FRA under this Agreement in relation to the availability and deployment of an item of Equipment shall not have effect for so long as: -
 - 5.1 that item of Equipment is in the course of regular maintenance; or
 - 5.2 that item of Equipment is awaiting or in the course of unplanned maintenance, repair or re-equipping.

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Schedule 4

List of Relevant Documents of Title

AS WITNESS etc

(signatures of (or on behalf of) the parties)

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