

Proposed changes to the delivery of local authorities'
and fire and rescue authorities' freedoms and
flexibilities after the introduction of comprehensive
area assessment



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Scope of the consultation

Topic of this consultation:	Local authorities and fire and rescue authorities' freedoms and flexibilities package.
Scope of this consultation:	Seek views on proposals for treatment of freedoms under the new comprehensive area assessment.
Geographical scope:	Local authorities and fire and rescue authorities in England.
Impact Assessment:	Impact Assessment: An impact assessment (IA) for local authority trading is attached at Annex F and for fire and rescue authorities trading at Annex G.

Basic Information

To:	Local authorities and fire and rescue authorities in England.
Body/bodies responsible for the consultation:	Department for Communities and Local Government.
Duration:	12 weeks.
Enquiries:	LTIE@communities.gsi.gov.uk
How to respond:	Information on how to respond to this consultation can be found on page 37.
Additional ways to become involved:	
After the consultation:	Consultation responses will be considered by Government and an agreed policy will be announced in due course.
Compliance with the Code of Practice on Consultation:	This consultation document complies with the code of practice on consultation. Further information can be found on page 34.

Background

Getting to this stage:	Initial discussions have taken place with the Local Government Association (LGA) Comprehensive Area Assessment Advisory Group, and the Business and Community Safety Forum.
Previous engagement:	As above.

4 | Proposed changes to the delivery of Local Authorities' and Fire and Rescue Authorities' freedoms and flexibilities after the introduction of Comprehensive Area Assessment

Contents

	Page
Executive Summary	7
Section 1: Scope of the consultation	11
Section 2: Background:	12
2001 Local Government white paper	12
Introduction of CPA related freedoms and flexibilities	12
CPA 2005: treatment of freedoms and flexibilities	13
Improved performance under CPA	13
Section 3: Why do we need to make changes:	14
The new local performance framework	14
Introduction of comprehensive area assessment	15
The sustainable community strategy	15
The Sustainable Communities Act	17
Section 4: Consideration of proposals for the treatment of freedoms and flexibilities under CAA:	18
Handling freedoms and flexibilities	19
Transitional arrangements	20
Local government restructuring	20
Section 5: Extension of freedoms:	21
Local authorities' power to trade	21
Fire and rescue authorities' freedoms and trading	22
Removal of ring fencing	24
Environmental fixed penalty notices	25
Section 6: Requirement removed:	26
Bus strategy	26
Section 7: Considering removing the requirement:	27
Home energy conservation report	27
Joint municipal waste strategy	27

Section 8: Remove the exemption but greatly simplify the requirement:	28
Local transport plan	28
Air quality action plan	29
Youth justice plan	29
Section 9: Remove the exemption but government recommends incorporating the plan into key retained plans:	31
Rights of way improvement plan	31
Homelessness strategy	31
Section 10: Superseded by the new local performance framework:	32
Best value performance plans	32
Membership of the innovation forum	32
Section 11: Requirement has been extended to a partnership therefore exemption has had to be removed:	33
Children and young peoples' plan	33
Section 12: Consultation criteria	34
Section 13: Summary of consultation questions	36
Section 14: Responding to the consultation	37
Annexes	
Annex A – Central government principles for achieving plan rationalisation 2002	39
Annex B – CPA 2005 single and upper tier freedoms and flexibilities	40
Annex C – CPA 2005 District council freedoms and flexibilities	42
Annex D – Freedoms and flexibilities granted to fire and rescue authorities in 2005	44
Annex E – Local authorities' freedoms and flexibilities – evidence of impact	45
Annex F – Impact assessment – local authorities' trading powers	48
Annex G – Impact assessment – fire and rescue authorities' trading powers	69

Executive summary

1. Why we need to make changes

- 1.1 A package of local authority freedoms and flexibilities related to comprehensive performance assessment (CPA) categorisation was introduced in 2002. The framework for comprehensive area assessment (CAA), published on 10 February 2009¹, which replaced CPA does not have an overall performance rating. This paper seeks views on how the freedoms and flexibilities package for local authorities and fire and rescue authorities, granted under CPA, can be treated under CAA in a way that is consistent with the move towards providing greater freedoms at local level.

2. Freedoms and flexibilities – background

- 2.1 The 2001 Local Government white paper, *Strong Local Leadership-Quality Public Services*², set out the Government's commitment to reducing the bureaucratic burden for all local authorities and providing additional freedoms for the very best. It introduced CPA related freedoms and flexibilities for top performing local authorities and work on rationalising statutory plans. The package of freedoms and flexibilities was subsequently extended to take account of CPA 2005 "a harder test" (details at Annexes B and C). A package of freedoms and flexibilities for fire and rescue authorities (FRAs) was introduced in 2005, following their first CPA assessment.

3. What has changed since the introduction of freedoms and flexibilities

- 3.1 The new local performance framework set out in the October 2006 Local Government white paper, *Strong and Prosperous Communities*, gives many of the freedoms in the original package such as freedoms from ring fencing. Subsequent statutory guidance³ identifies the key plans for the area – the sustainable community strategy (SCS) is the overarching long-term vision for an area, for which the local area agreement is the delivery plan. Other key plans include local transport Plans, children and young peoples' plan, and waste strategy, and these should be aligned to the SCS. Planning requirements on local authorities have been dramatically reduced. Seventy-five percent of the 66 plans identified for rationalisation in 2002 have now been removed.
- 3.2 Since the introduction of CPA, there has been a demonstrable improvement in performance. 2008 was the fourth and final year of the Audit Commission's "harder test" CPA framework for single tier and county councils, and the final allocation of star ratings to individual local authorities. In its results, 80 per cent of upper tier authorities were assessed as performing in the top two CPA categories – achieving 3 or 4 stars. Overall in 2008, 122 out of 150 (81 per cent) upper tier councils were

¹ <http://www.audit-commission.gov.uk/caa/framework.asp>

² <http://www.communities.gov.uk/archived/general-content/localgovernment/archivedlocalgovernment/>

³ *Creating Strong, Safe and Prosperous Communities*, <http://www.communities.gov.uk/publications/localgovernment/strongsafeprosperous>

either 'improving strongly' or 'improving well'; 35 (24 per cent) were 'improving strongly' and 87 (58 per cent) were 'improving well'. For the third consecutive year, no single tier or county councils achieved the lowest possible CPA rating (0 star); 10 councils were in the lowest CPA categories (0 star and 1 star) in 2005, compared with four councils in 2008 (four as 1 star, none as 0 star). All upper tier authorities, and most of the districts, have access to some of the freedoms in the package.

4. Our initial thinking for handling freedoms and flexibilities under CAA

- 4.1 CAA does not have an overall categorisation to pin freedoms, equivalent to CPA categorisation, across the range of council services and functions. We could base freedoms on CAA organisational assessments scores, but these are only one component of CAA and they do not recognise partnership delivery.
- 4.2 Furthermore, we currently have little evidence to support the need for a new package of performance related freedoms under CAA. The current package has not had a high take up, and a new package might deny access to those authorities who need it most.
- 4.3 Local authorities already have a discretionary power (the well-being power) to undertake any action to promote or improve the social, economic and environmental well being of their area⁴. Further to this, the Sustainable Communities Act 2007 provides an opportunity for local authorities to make proposals which are not already within their powers. Councils will have until 31 July 2009 to seek and submit proposals.
- 4.4 The new local performance framework provides many of the freedoms given under the original package and more. Freedoms for more authorities have been designed into the new CAA system – which is targeted, proportionate, risk based and less burdensome. In new style local area agreements (LAAs) there are opportunities for locally negotiated freedoms. Where there are issues which impact on the level of targets that need to be resolved, these should be raised as part of the LAA annual review with government offices.
- 4.5 Furthermore, multi-area agreements (MAAs) provide real flexibilities to help deliver improved economic outcomes. Ten multi-area agreements have been signed covering around 50 upper tier local authority areas. Negotiations are continuing for further MAAs this year. To date, the Government has given over 120 commitments to help MAAs deliver improved economic outcomes. Building on the success of MMAs, the Government announced two new City Region pilots in Leeds and Manchester to test how they can show even greater leadership and deliver increased economic performance if given the right influence and control over key policy levers.

⁴ Only the 15 FRA county councils are eligible for well-being powers. FRAs in general, as single service providers are explicitly excluded.

Our proposals

4.6 We are considering addressing each freedom individually under CAA. Our aim is to recognise the improved performance of LAs, freeing them up where possible, and not introducing unnecessary burdens. We are proposing the following approaches:

Extension of freedoms:

- local authorities' power to trade
- fire and rescue authorities' power to trade
- for those fire and rescue authorities rated as CPA excellent, the option of bespoke freedoms and flexibilities for innovative service delivery
- un-ring fencing of supporting people programme grant
- un-restricted spend on income from environmental fixed penalty notices

Requirement to produce a separate plan removed:

- bus strategy

Considering removing the requirement to produce a separate plan

- home energy conservation report
- joint municipal waste management strategies

Remove the exemption, but Government recommends incorporating the plan into one of the key plans that will be retained:

- rights of way improvement plans merge into local transport plans
- recommend incorporating homelessness strategy into sustainable community strategy

Removing the exemption for retained key government plans, but simplify the requirement:

- local transport plans, which all authorities currently choose to complete, no longer assessed by DfT, and local authorities not required to replace their LTP every five years
- air quality action plans only require reporting on seven pollutants but Government is seeking ideas for further simplification
- the youth justice plan – 18 plans have been incorporated into one

Superseded by the new local performance framework:

- best value performance plans – best value performance indicators replaced by the national indicator set
- the Innovation Forum ended on 31 March 2008. The national improvement and efficiency strategy announced that new arrangements for supporting innovation were being developed

Requirement no longer applies to the local authority alone but is being extended to a partnership body, the Children's Trust Board, therefore exemption has had to be removed:

- children and young people's plan, which all authorities currently choose to complete.

5. Questions

5.1 We would like to receive views on the following :

Question 1: Do you agree to the proposed approach to handling freedoms and flexibilities under CAA?

Question 2: Given the new local performance framework and the provisions of the Sustainable Communities Act, are there any additional specific local freedoms worth considering?

Question 3: Do you agree that the power to trade should be extended to all local authorities?

Question 4: Should 'excellent' CPA rated FRAs, have access to bespoke freedoms and flexibilities for innovation in service delivery⁵? Approval would be subject to clearance by Ministers within 12 months of this consultation ending. As bespoke freedoms need to be innovative, we do not propose to impose a time-limit for their duration.

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 question 5, should the current FRA Trading Order be extended indefinitely?

Question 7: Should the freedom on how to spend fixed penalty notices from environmental crimes including litter, graffiti and flyposting, and dog control order offences be extended to all local authorities?

Question 8: Are there any ways in which you think local air quality management under Part 4 of the Environment Act 1995 can be further simplified?

⁵ This could only be taken forward if the majority of respondents support the proposal.

Section 1

Scope of the consultation

1. Local authorities and fire and rescue authorities in England are currently given certain freedoms and flexibilities linked to their comprehensive performance assessment (CPA) categorisation. CPA was replaced by the new comprehensive area assessment (CAA) as of April 2009. There is no overall performance rating under CAA to pin freedoms to, which is equivalent to the CPA categorisation across the range of council services and functions. The purpose of this consultation is to seek views on proposals for the treatment of these freedoms under CAA.
2. Impact and new burdens assessments have been considered for individual freedoms where necessary.

Section 2

Background

2001 Local Government white paper

3. The 2001 Local Government white paper, *Strong Local Leadership-Quality Public Services*⁶, announced the CPA framework. CPA brought together all the assessments of performance by local authorities and put each local authority in a category, ranging from excellent to poor. It was established to bring together views on the current performance of a local authority. The aim was to provide citizens with a report card on how their council was performing compared to other councils in England. It also enabled Government to apply measures appropriate to councils' performance – including more support for weaker authorities and less regulation for high performers.
4. The white paper set out the Government's commitment to reducing the bureaucratic burden for all local authorities and providing additional freedoms for the very best, to give them scope to shape and improve services to meet local needs. It identified cutting back on strategy and plan requirements as an element in the wider devolution of responsibility to authorities. There were three main elements:
 - reduction in the number of plans
 - the possibility of further reductions for the highest performers
 - streamlining of the requirements that remain so that their impact is reduced and they go more with the grain of authorities' own processes
5. Key principles to guide further rationalisation of plans were announced in 2002 on the scope for further reductions (attached at Annex A):

Introduction of CPA related freedoms and flexibilities

6. A programme of performance-related freedoms and flexibilities for single tier and county councils based on CPA categories (excellent, good, fair, weak and poor) was announced in 2002. The package included, depending on CPA categorisation, the power to trade, freedom from producing certain statutory plans, less inspection, removal of ring fencing, freedom on how to spend income from environmental fixed penalty notices and freedom to provide only minimal information for best value performance plans. A similar package for district councils was introduced in 2003.

⁶ <http://www.communities.gov.uk/archived/general-content/localgovernment/archivedlocalgovernment/>

A package of freedoms and flexibilities for fire and rescue authorities was introduced in 2005, following their first CPA assessment.

CPA 2005: Treatment of freedoms and flexibilities

7. In 2005 a new CPA framework, “the harder test”, replaced the five categories of excellent to poor for single tier and county councils with five new categories of 0 to 4 stars. In January 2006 the then Office of the Deputy Prime Minister issued a consultation on the treatment of freedoms and flexibilities under the harder test.⁷ In September 2006 the results of the harder test consultation were announced⁸, and a package of new freedoms and flexibilities for England’s 150 single tier and county councils was introduced (details are given at Annex B).
8. District councils in areas where there are also county councils continued to be assessed according to the ratings of excellent to poor under a targeted and risk-based framework which was intended to be more proportionate to their size and responsibilities (details of their freedoms and flexibilities are given at Annex C). Under this modified framework the Audit Commission undertook re-categorisation activity only where there was significant evidence to indicate a potential change in CPA category.
9. Following the first CPA assessment in 2005 for fire and rescue authorities (FRAs), a package of freedoms and flexibilities are in place for strong performing FRAs. The general principle governing these freedoms and flexibilities is that they are a means to support innovation and improvement rather than simply a reward for strong performance. Annex D sets out the freedoms and flexibilities granted to FRAs.

Improved performance under CPA

10. CPA results have demonstrated improved local authority performance. When CPA was introduced in 2002, 22 single tier and county councils were categorised as excellent, 54 as good, 40 as fair, 21 as weak, and 13 as poor. By comparison, in 2008 62 single tier and county councils rated as 4 stars, 57 as 3 stars, 26 as 2 stars, four as 1 star and no authorities were 0 star.
11. FRAs have demonstrated similar improvement in performance. CPA was introduced for FRAs in 2005. In the results published in 2009, three were rated excellent; 22 good, 18 fair, two weak and one poor.

⁷ <http://www.communities.gov.uk/publications/localgovernment/proposedchanges>

⁸ <http://www.communities.gov.uk/documents/localgovernment/pdf/160463.pdf>

Section 3

Why do we need to make changes?

12. A number of changes to government policy have made it necessary to re-consider our approach to Government policy. These are set out below:

The new local performance framework

13. The October 2006 Local Government white paper, *Strong and Prosperous Communities*⁹, set out proposals for the development and delivery of a new performance framework for local services. It has two aims, improving the quality of life in local communities, and better public services.
14. The new framework sharpens the accountability of local authorities around real priorities. The long-term vision for an area is set out in each local area's sustainable community strategy; in delivering this, each local area agrees up to 35 targets with central government through new local area agreements (LAAs). LAAs are at the heart of the new performance framework, allowing individual areas to focus on what is important to residents to improve their quality of life, and move away from a 'one size fits all' set of targets from Whitehall. They create one single place for the agreement of targets on locally delivered priorities and are a practical means of delivering devolution, on the ground. In June 2008 150 LAAs were signed.
15. The new LAAs and national indicators help to cut down on bureaucracy and red tape. Previously local authorities and FRAs had to report against around 1,200 indicators. Now, local partnerships only have to report on a set of 188 national indicators. The national indicator set gives local authorities and their partners a sharper, more consistent sense of national priorities and their responsibilities for delivery¹⁰.
16. The framework covers all outcomes secured by local authorities working alone or in partnership. It includes a new approach to assessment and inspection to replace CPA, providing for independent external challenge and assurance from inspectorates: this is the comprehensive area assessment (CAA). This is dealt with in more detail below.

⁹ <http://www.communities.gov.uk/publications/localgovernment/strongprosperous>

¹⁰ <http://www.communities.gov.uk/localgovernment/performanceframeworkpartnerships/nationalindicators/>

Introduction of comprehensive area assessment

17. CAA was introduced from April 2009, replacing CPA and most other rolling programmes of inspection and assessment for local authorities and fire and rescue authorities. CAA is intended to bring together assessments of performance across each local area, and will apply to anything done by local authorities acting alone or in partnership. There will be no overall performance rating under CAA, and no rating or score for the CAA area assessment. It is also not intended that there will be specific ratings attached to assessments of individual services, although the inspectorates' final framework for CAA¹¹ reflected the approach in the 2006 white paper by providing that organisation assessments for local public bodies should be scored. The CAA organisation assessment for councils will comprise judgements on 'managing performance' and use of resources. A similar approach, with an operational element in line with the fire and rescue national framework, will apply to the CAA organisation assessments for fire and rescue authorities. The framework for the assessment of fire and rescue authorities under CAA¹², was published in February 2009 by the Audit Commission. It should be read in conjunction with the CAA framework document which sets out the broader context of CAA and provides further relevant detail for fire and rescue services.

18. Results for the final year of CPA,¹³ and the final allocation of star ratings to individual local authorities, were published on 5 March 2009. The results have shown that 80 per cent of councils were 3 star or 4 star in 2008, with 35 councils rated as "improving strongly" - more than ever before¹⁴. In 2002, when CPA started, only 15 per cent of councils were judged to be performing in the highest category but by 2008 this had risen to 42 per cent with no council rated as 0 star compared with 34 per cent of councils rated as weak or poor in 2002¹⁵. The CPA frameworks for 2007 and 2008 had the dual aims of maintaining performance standards and of a smooth transition towards CAA, reflecting responses to the Audit Commission's consultations.

The sustainable community strategy

19. The purpose of a sustainable community strategy (SCS) is to set the overall strategic direction and long-term vision for the economic, social and environmental wellbeing of a local area – typically 10-20 years – in a way that contributes to sustainable

¹¹ <http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/63FF7DFA-D1DB-46D0-B72E-39DA12AEF9E1/200902CAAFramework.pdf>

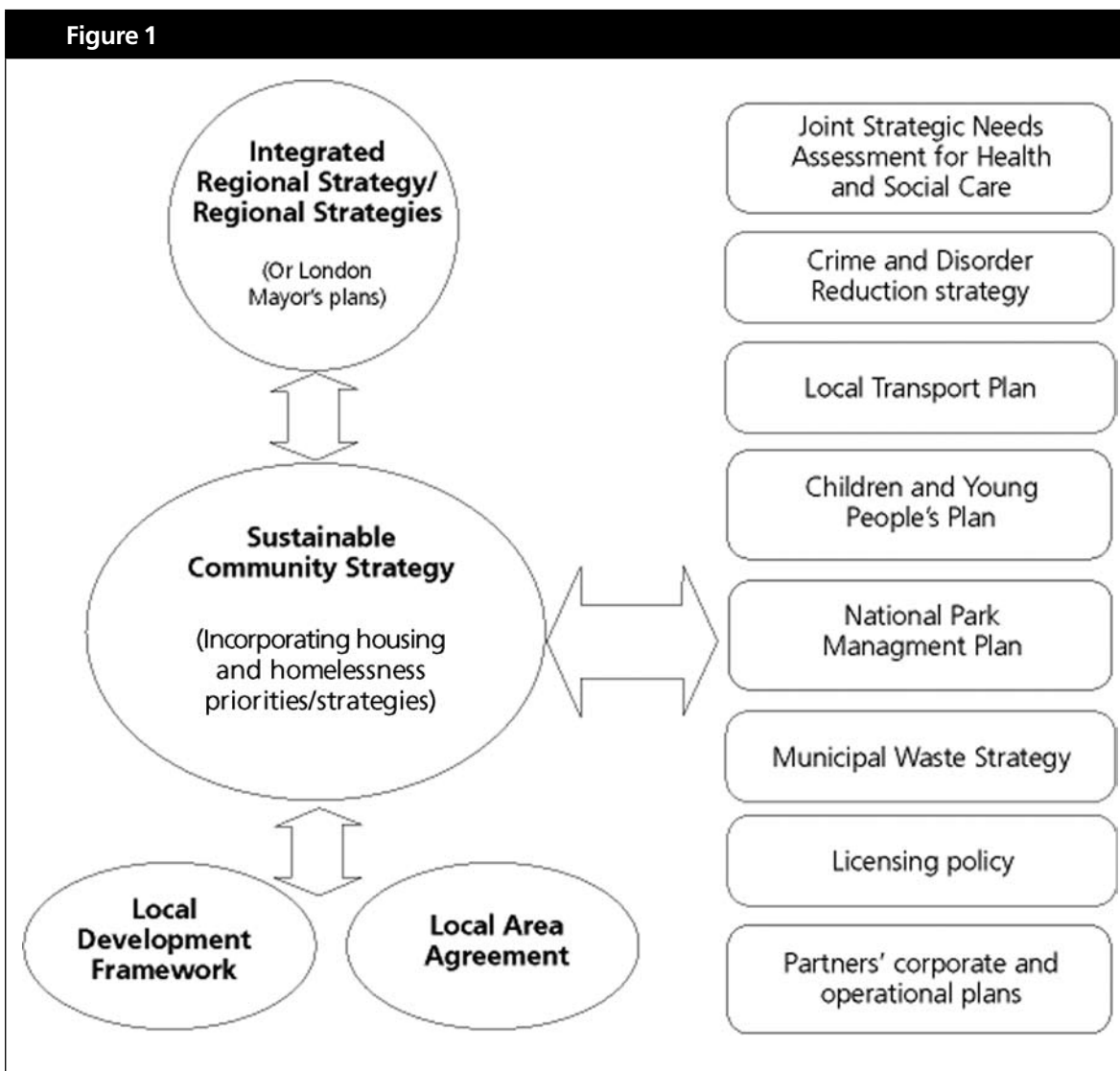
¹² <http://www.audit-commission.gov.uk/caa/downloads/200902CAAFireAndRescueFramework.pdf>

¹³ <http://www.audit-commission.gov.uk/cpa/stcc/stccscores.asp>

¹⁴ The Children and Young People's service was the only service assessment to have a net deterioration in scores in 2008 (CPA 2008 Results)

¹⁵ <http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=5D95B76F-5470-4219-A839-1C280C8B57F6&fromREPORTSANDDATA=NATIONAL-REPORT>

development in the UK. It tells the 'story of the place' – the distinctive vision and ambition of the area, backed by clear evidence and analysis. The Local Government white paper, *Strong and Prosperous Communities* explained that the sustainable community strategy would provide “a vehicle for considering and deciding how to address difficult and cross cutting issues such as the economic direction of an area, cohesion, social exclusion and climate change”. The SCS sets out the long-term vision and key priorities for the local area, based firmly on local needs. These then inform the strategy's delivery agreement – the local area agreement (LAA). The remaining statutory plans and policies that local authorities and local strategic partnerships will need to consider are illustrated in figure 1 below:



The Sustainable Communities Act

20. Local authorities already have considerable flexibility to take action under their 'well-being' powers¹⁶. Further to this, the Sustainable Communities Act 2007 provides an opportunity for local authorities to make proposals which they consider will encourage the improvement of the economic, social or environmental well-being of local areas, and are not already within their powers. On 14 October 2008, at the LGA conference *Selecting Sustainability*, the Secretary of State issued her formal invitation to local authorities to submit proposals to the selector on behalf of central Government (the LGA) under the Act. Councils will have until 31 July 2009 to seek and submit proposals.

¹⁶ The Local Government Act 2000 provides local authorities with a discretionary power (the Well Being Power) to undertake any action to promote or improve the social economical and environmental well being of their area (section 2).

Section 4

Consideration of proposals for the treatment of freedoms and flexibilities under CAA

21. Under CAA there is no overall categorisation of local authorities' performance or prospects for improvement to which to pin freedoms. Freedoms could be based on councils' CAA organisational assessment scores, which will be rated on a scale of 1-4, but these are only one component of performance within a local area and do not recognise the partnership-based delivery of many local outcomes and services. Organisational assessments will not be directly equivalent to the CPA categorisation of authorities, which is derived from a calculation of performance across the range of council services and functions. Although it would be possible to pin freedoms to councils' organisational assessment on the basis of the rating, this could appear to be a contrary incentive to focus on individual organisational performance at the expense of partnership working and area outcomes.
22. It is important to consider whether finding a way of attaching a package of performance-related freedoms to CAA is consistent with Government's aim of freeing up local authorities from unnecessary bureaucracy. It is also the case that freedoms and flexibilities were introduced as a measure of earned autonomy for top performers. Now with most (80 per cent) of single tier and county councils achieving 3 or 4 star categorisations, this method of distinguishing local authorities extends most freedoms and flexibilities to most councils.
23. The Government is also concerned that all councils innovate and develop flexible options for improved delivery. It is for this reason that many of the freedoms, such as increased flexibility over use of resources, are now available to all local authorities through the mainstreaming of more grants (either through revenue support grant or area based grant). Or the freedoms have been overtaken, such as from BVPIs which have been replaced by the national indicator set.
24. In relation to inspection, the new CAA moves away from applying a high level of inspection, assessment and monitoring to all local authorities and then decreasing some of the burden as a recognition or incentive of better performance; instead, the new performance framework includes a robust but proportionate assessment regime for all areas. This enables greater inspectorate resources and improvement efforts to be targeted on those outcomes and delivery partners at greatest risk of

failure or where the results of failure would be most significant. The way in which assessments will be carried out is intended to be less burdensome overall in terms of both inspections and data requirements. So some freedoms for more authorities have already been designed into the new system.

25. It is also the case that the package of freedoms has had variable impact, for instance all local authorities who are exempt from producing local transport plans currently submit them. Annex E gives details of research.
26. There are also locally negotiated freedoms available within the new LAAs, which replace LAA freedoms and flexibilities (which were known as “enabling measures”). Where there were issues which impacted on the level of targets that needed to be resolved, there was an opportunity to raise these as part of the LAA negotiations. There is also an opportunity to discuss issues which impact on targets during the LAA annual review.
27. Furthermore, multi-area agreements (MAAs) provide real flexibilities to help deliver improved economic outcomes. Ten MAAs have been signed: Bournemouth, Dorset and Poole; Greater Manchester; Leeds City Region; Leicester and Leicestershire; Liverpool City Region; Pennine Lancashire; South Hampshire; South Yorkshire; Tees Valley; and Tyne & Wear. These cover around 50 upper tier local authority areas. MAAs cover a quarter of the English population and five of the eight core cities. Negotiations are continuing for further MAAs with half a dozen partnerships. To date, the Government has given over 120 commitments to help MAAs deliver, including:
 - working with partnerships to establish employment and skills boards with powers to set a binding strategy on national skills agencies
 - the use of a strategic flood risk assessment to accelerate development in regeneration areas in urban South Hampshire
 - pilot a single simplified appraisal system to speed up infrastructure projects in Tees Valley, avoiding unnecessary red tape

Handling freedoms and flexibilities

28. The remainder of this consultation document addresses each constituent freedom in the package and considers how they could be handled under CAA, with the aim of not imposing unnecessary burdens and wherever possible extending freedoms. Our approach has been to consider whether the freedom can be extended, the requirement can be removed so the freedom is not needed, or the requirement can be simplified.

Consultation question 1

Do you agree to the proposed approach to handling freedoms and flexibilities under CAA?

Consultation question 2

Given the new local performance framework and the provisions of the Sustainable Communities Act, are there any additional specific local freedoms worth considering?

Transitional arrangements

29. Local authorities have a grace, or transitional period, where they retain their current freedoms from producing statutory plans for up to two years, depending on the individual freedom. Details are given in Annexes B and C. These transitional periods, based on March 2009 CPA results, will commence in mid 2009, 21 days after a new categorisation order is laid. The categorisation order will allow local authorities that currently have access to the powers to trade to continue to do so. In due course, if the consultation proposal is adopted, a new amending trading order will be made to grant the power to trade under the 2003 Act to all local authorities in England.

Local government restructuring

30. Specific transitional arrangements have been made separately for areas where new unitary local authorities were established on 1 April 2009.¹⁷ The overall approach is to ensure that the new unitary authorities benefit from a short transitional period where appropriate, allowing them to focus on ensuring a smooth transition on and after 1 April in the key services and no immediate diminution in the ability of those services to operate effectively.

¹⁷ Paragraph 36 contains further information on the handling of trading powers for unitary councils which became local authorities for the first time on 1 April 2009

Section 5

Extension of freedoms

Local authorities' power to trade

31. The power to trade¹⁸ is provided under powers in the Local Government Act 2003 and is currently available to excellent, good, fair, and 1 to 4 star local authorities. In 2006 the responses to the consultation on how to handle the trading powers under CPA 2005 received support from the LGA and a number of other respondents to extend the power further to all local authorities. The Lyons Inquiry also recommended that the power should be extended to all local authorities.
32. Under CPA, local government has demonstrated improved performance in the delivery of their services. With CPA coming to an end, there is a need to establish how to make the trading powers available to local authorities.
33. The terms of the trading order places safeguards on the use of the power, for example, by requiring an authority to prepare and approve a business case before trading. This requirement ensures that authorities manage risks effectively. However, local authorities will need to continue to base firmly any proposed trading activity on the need to secure value for money for the taxpayer and have regard to relevant good practice.
34. The policy does not place any direct burden on local authorities or business. It will operate to improve competition in the delivery of public services, provide surpluses for local authorities to either invest in public services or keep down council tax increases, and to create partnering and sub-contracting opportunities for small businesses.
35. The Government proposes to remove the link between categorisation and the trading powers by extending the powers to all local authorities. This would have the effect (as at the last categorisation order) of making the powers available to another 39 local authorities, 38 of which are the smaller lower-tier authorities.
36. Unitary councils which became local authorities for the first time on 1 April 2009 will not have a CPA categorisation (i.e. Central Bedfordshire Council, Cheshire East Borough Council, and Cheshire West & Chester Borough Council). Accordingly

¹⁸ Guidance on the general power for Local Authorities to trade was published in July 2004: <http://www.communities.gov.uk/documents/localgovernment/pdf/133628.pdf>

they would not have access to the power to trade when they came into existence on 1 April and therefore specific provision was made in Local Government (Structural Changes) (Further Transitional And Staffing) Regulations¹⁹ 2009 (SI No: 2009/486) to grant enhanced transitional arrangements allowing the new councils to trade but limiting this to a period of 24 months from 1 April 2009. This consultation paper proposes that trading powers be extended to all local authorities and the position of all the new unitary councils is covered by this. The future trading position for all local authorities would be dealt with by an order under section 95 of the 2003 Act. An impact assessment has been prepared and is attached at Annex F.

Consultation question 3:

Do you agree that the power to trade should be extended to all local authorities?

Fire and rescue authorities' freedoms and trading

37. FRAs' freedoms and flexibilities set out in Annex D were adopted in 2005 following discussions with the Local Government Association, Chief Fire Officers Association and individual FRAs. We propose that excellent CPA rated fire and rescue authorities will be able to put forward innovative service delivery proposals to ministers within 12 months of this consultation closing (subject to the majority of respondents supporting the proposal). As the bespoke freedoms need to be innovative, we do not propose to impose a time-limit for their duration.
38. Under CPA the 46 fire and rescue authorities in England were annually performance assessed by the Audit Commission. Final CPA results were published in February 2009 :
 - seventy-one per cent (32) are assessed as improving well
 - eleven per cent of fire and rescue authorities receiving the highest marking
 - thirteen services (29 per cent) improved their direction of travel
 - only one FRA received a 'no improvement' since the 2007 assessment
39. A sector lead approach to operational assessment (OpA) has been developed and the new OpA toolkit was launched on 9 April 2009²⁰. There is no longer a formal scoring mechanism. OpA is a voluntary process and comprises of seven key lines of enquiry which can be peer-challenged. To reduce the burden on FRAs the Audit Commission is mapping its fire CAA service assessment methodology across to the OpA so that data is only collected once. If an FRA does not undertake a suitably robust OpA the Commission will make its own assessment using data already collected

¹⁹ http://www.opsi.gov.uk/si/si2009/uksi_20090486_en_1

²⁰ <http://www.communities.gov.uk/publications/fire/fsc232009>

and additional performance information where deemed necessary. The first CAA assessments are due in November 2009.

Consultation question 4:

Should 'excellent' CPA rated FRAs have access to bespoke freedoms and flexibilities for innovation in service delivery²¹? Approval would be subject to clearance by ministers within 12 months of this consultation ending. As bespoke freedoms need to be innovative, we do not propose to impose a time-limit for their duration.

40. The principal Trading Order did not apply to local authorities when acting in their capacity as a Fire & Rescue Authority (FRA). Neither were the FRA powers to trade linked to CPA performance. An amending Trading Order, came into effect on 1st October 2004 to provide transitional arrangements so that named FRAs had continued access to trade in specific services²². The order was subsequently amended in 2004 and 2007.
41. The FRA power to trade was originally intended to expire on 29 September 2007. A consultation in 2007, concluded that 77% of respondents supported the intention of extending the power to trade for a further two years, to maintain the status quo and then to consider it within the context of the wider freedom and flexibilities proposals in 2009. Consequently this power was extended until 29 September 2009. The full findings of this consultation are at:
[http://www.communities.gov.uk/documents/fire/pdf/revisionlocal government.pdf](http://www.communities.gov.uk/documents/fire/pdf/revisionlocal%20government.pdf).
42. It is therefore proposed that English FRAs have the same scope of access to trading powers as local authorities. This consultation paper therefore seeks views on extending the trading powers for English local authorities to the 46 English FRAs to trade in any of their ordinary functions. The terms for FRAs to trade will not differ from those that apply to local authorities including the need to set up a company. They will be subject to the conditions requiring the approval of a business case and the need to secure value for money for the taxpayer.
43. 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 5 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.

²¹ This could only be taken forward if the majority of respondents support the proposal.

²² Draft guidance on the power for FRAs to trade was published in January 2007:
<http://www.communities.gov.uk/documents/fire/pdf/153140.pdf>

44. A small firms impact test (SFIT) was sent to over 300 businesses in 2007. One direct response to the questionnaire was received from a small and medium sized enterprise (SME). They concluded that there was no impact to their business from current trading practices by FRAs and they did not perceive that extending the order would have any relevant costs or savings to them.
45. Further information and new evidence is being sought from SMEs during this consultation.
46. A draft impact assessment has been prepared and is attached at Annex G. This recommends providing FRAs with powers to trade in all of their services. This is the preferred option since it has been the Department's intention that FRAs should have the same scope of access to trading powers as local authorities.
47. Trading will help create a dynamic and entrepreneurial public sector which will increase diversity and choice in the delivery of public services. By setting up trading companies FRAs will be subject to the same conditions as private sector thus ensuring a level playing field.

Consultation question 5:

Should the power to trade be extended to permit all fire and rescue authorities to trade in all of their services?

Consultation question 6:

If there is no agreement on question 5, should the current FRA trading order be extended indefinitely?

Removal of ring fencing

48. Under CPA, local authorities who are categorised as 3 or 4 star authorities received all specific revenue grants on a non-ringfenced basis, with the exception of the supporting people programme grant and grants passported to schools. The new local performance framework provides local authorities with greater flexibility in the way they use Government grant. The Department for Communities and Local Government has increased the amount of non-ringfenced funding for all authorities. The area based grant, a non-ringfenced grant which is made up of over forty individual grant streams from seven government departments, was introduced in 2008-09. The area based Grant is expected to be worth around £4.8bn by 2010-11 and local authorities will have discretion to use it to support priorities.

49. Since its launch in 2003, supporting people programme grant has been paid as a ringfenced fund for councils, to be spent according to specific rules. However from April 2009, supporting people programme grant will be allocated to councils as a non-ringfenced named grant, paid separately to, but with the same financial flexibility as area based grants. This removal of the ring fence provides councils with the opportunity to come up with new and innovative ways to support vulnerable people in a range of different situations. The supporting people programme grant will be included in the area based grant from April 2010.

Environmental fixed penalty notices

50. Single and upper tier authorities categorised as 2, 3 and 4 star and 'excellent' and 'good' districts may spend their fixed penalty receipts from litter, graffiti and flyposting, and dog control order offences on any of their functions. This provides more flexibility to local authorities in how they use the receipts from fixed penalty notices issued for environmental crimes in order to encourage proactive management of local environments. The Government is in favour of extending the take up of this freedom, and in view of local authorities' improved performance, proposes extending this freedom to all local authorities.

Consultation question 7:

Should the freedom on how to spend fixed penalty notices from environmental crimes including litter, graffiti and flyposting, and dog control order offences be extended to all local authorities?

Section 6

Requirement removed

Bus strategy

51. The Local Transport Act, which received Royal Assent in November 2008, removed the requirement to produce a separate bus strategy (see paragraph 54 for information on local transport plans).

Section 7

Considering removing the requirement

Home energy conservation report (HECA)

52. In late 2007, the Government held a public consultation exercise on the future of the Home Energy Conservation Act 1995 (HECA). As part of this, the Government recommended repealing HECA altogether in England on the basis that it had not been, in itself, responsible for improvements in energy efficiency in the household sector. The idea of repeal was supported by two-thirds of respondents to the consultation, including the Local Government Association and the majority of individual local authorities. The Government is currently considering next steps and intends to make an announcement shortly. While HECA remains on the statute book, the Department of Energy and Climate Change (DECC) holds an annual reporting round based on submissions from local authorities in England. The reporting round for 2007-08 is ongoing. A number of English local authorities currently benefiting from an exemption from this reporting requirement continue to provide information to DECC. The new performance framework includes two indicators on climate change mitigation (i.e. carbon dioxide emissions). These are an indicator on emissions from local authority operations and an indicator on per capita emissions across a local authority area (including households).

Joint municipal waste management strategy

53. Approximately 231 of the 313 two-tier local authorities with a duty (under the Waste and Emissions Trading Act 2003) to draw up a joint municipal waste management strategy, are exempt from this duty. However most local authorities in both two-tier and single tier areas have municipal waste management strategies anyway. As two grounds for exemption from the duty for two-tier areas, CPAs and statutory recycling targets, have been removed by the new local performance framework, and there are three relevant indicators in the national indicator set, Defra plans to consult in mid 2009 on the future of the duty.

Section 8

Remove the exemption but greatly simplify the requirement

Local transport plan

54. Under the Transport Act 2000, authorities outside London were required to prepare a local transport plan (LTP) setting out their transport policies and plans for delivery. In the light of consultation, the Local Transport Act, which received Royal Assent in November 2008, retained this requirement, but removed the requirement to produce a separate bus strategy. The Act also removed the requirement for LTPs to be reviewed at least every five years – authorities may now replace their plans as they see fit.
55. The second round of LTPs is due to finish in 2011. DfT went out to consultation on 18 December 2008 on guidance to support authorities in preparing their third LTPs²³. The consultation ended on 9 April 2009.
56. The DfT consultation proposed that from 2011, former 4 star authorities will no longer be exempt from producing an LTP. It is not considered that this will impose an additional burden, as these authorities have all chosen to produce plans anyway. The proposed arrangements allow authorities more freedom in developing plans:
 - no submission of plans to DfT for assessment
 - performance funding will not be attached to the quality of plans and delivery, and performance management will rely on the local area agreement system
 - government offices will continue to support local authorities in developing and reviewing plans
57. LTPs will no longer be required to contain mandatory performance indicators. But they should demonstrate what transport measures are being taken to improve performance against the relevant national indicators. Progress reviews of LTPs will provide evidence for the inspectorates to use in undertaking comprehensive area assessment.

²³ <http://www.dft.gov.uk/ltp/>

Air quality action plan (AQAP)

58. Most of the 4 star authorities that are currently exempt from producing an AQAP choose to do so. Due to the EU Commission imposing a statutory duty on each member state to meet limit values for a number of air pollutants and the importance of local action plans for meeting these limit values, it is proposed to remove the exemption once CPA ends. Defra has been considering options for minimising the burden on local authorities in the way they produce AQAPs, and revised local air quality management guidance will simplify local authority reporting so that seven pollutants are reported on, rather than focus on the potential sources for each of these pollutants. Defra will keep the system under review to consider whether further improvements can be made.

Consultation question 8:

Are there any ways in which you think local air quality management under Part IV of the Environment Act 1995²⁴ can be further simplified?

Youth justice plan

59. Due to the importance of the youth justice plan, the Youth Justice Board (YJB) is removing the exemption but is greatly streamlining the requirement. Prior to 2008, the majority of Youth Offending Teams (YOTs) completed a youth justice plan annually – this included a large number of YOTs that were exempt as they were within 3 and 4 star local authorities.
60. The YJB sits in a unique position: it straddles both local service delivery and ministry of Justice considerations, it has a statutory duty to monitor provision that bring together children's services and community safety, and it covers both England and Wales. In recognition of this role a specific youth justice performance framework was agreed at ministerial level with both Justice and Children's ministers. This includes consideration of reducing offending alongside protection of the public and safeguarding the needs of children who come into contact with the youth justice system. It also facilitates reporting across both countries.
61. YOTs are partnerships. Although they are formally placed within local authorities they are made up of personnel, funding and governance arrangements from across a number of different organisations including police, probation, health, education and housing.

²⁴ Part 4 of the Environment Act 1995 requires local authorities to assess the air quality in their area, and where it appears that any air quality standards or objectives are not being achieved they must designate the area as an air quality management area and prepare a written plan in pursuit of the achievement of relevant standards and objectives.

62. As part of the developments following local government reforms, the YJB reduced from 12 to 6 the number of YOT performance indicators from April 2008. These six were successfully included in the National Indicator Set and there are no other key performance indicators for YOTs. The number of plans the YJB required YOTs to submit on an annual basis has been reduced from 18 to 1 and the youth justice plan is now the only plan required from July 2008. The YJB now monitors YOTs on a risk led basis with resources targeted on the basis of impact against PSAs, performance against the national indicators and an evaluation of performance prospects.
63. The YJB undertook extensive consultation prior to these developments and since completion of the first round of this process have undertaken further consultation. The overwhelming response has been positive and as a result the YJB is further streamlining the process. It has been developed with the local performance framework and CAA in mind and once the latter is more developed the YJB will review its processes again to ensure they are fully compatible.
64. The YJB is committed to undertaking further consultation and would like to consider moving to a form of risk placed plans. It would also like to consider three year plans but this would require the YJB to be given the ability to announce three years funding for YOTs.

Section 9

Remove the exemption but Government recommends incorporating the plan into key retained plans

Rights of way improvement plan (ROWIP)

65. All four star authorities who are currently exempt from producing ROWIPs have nonetheless undertaken to produce a ROWIP. The current statutory deadline for reviewing ROWIPs is November 2017. The intention is to continue to integrate the rights of way improvement plan with the local transport plan, which authorities have been doing since the second round of the local transport plan.

Homelessness strategy

66. The Housing green paper, *Homes for the Future: More Affordable, More Sustainable* emphasised the strategic role that housing services play in delivering new markets and affordable housing. Local housing authorities have a statutory requirement to revise their homelessness strategies at least every five years. As set out in *Creating strong, safe and prosperous communities* - statutory guidance, there is currently an expectation that authorities will incorporate their homelessness strategy - as well as their housing strategy - within their sustainable community strategy, wherever possible. High performing local authorities (3 and 4 stars and 'excellents') are currently exempt from the duty to renew their homelessness strategies, although there is an expectation that such authorities will wish to keep them valid and up to date. Given the economic climate, and the increased risk of homelessness for those who lose their employment or get into financial difficulties with their mortgage, there is a compelling case for ensuring that all housing authorities in England have a homelessness strategy which is kept up to date. Consequently, the exemption for high performing authorities from having to renew their homelessness strategy every five years will be removed (although there will be a grace period of 12 months during which 4 star authorities will continue to enjoy the exemption). *The Homelessness Code of Guidance for Local Authorities* notes that there will be a lot of common ground between an authority's housing strategy and its homelessness strategy and that it is open to authorities to either produce separate strategies or combine them in a single document where it is consistent to do so.

Section 10

Superseded by the new local performance framework

Best value performance plans (BVPPs)

67. Under CPA 2005, there was a freedom to provide only the minimum essential information for BVPPs, and to annex the information to annual corporate plans rather than producing a separate BVPP. Local authorities are no longer required to provide BVPPs. Best value performance indicators were replaced by the new national indicator set in April 2008.

Membership of the Innovation Forum

68. The Forum was established in 2003 to work with excellent local authorities to pilot innovative programmes and liaise with central Government to inform policy. The Forum has had a number of successes, such as the rationalising targets project that led to the introduction of LAAs. However, Audit Commission research has found that it is not always the top performing authorities that are the most innovative and it was felt that the Forum had run its course. The Forum therefore closed for business on 31 March 2008, as it was decided that future arrangements for local authority innovation would be more sector led - in line with the vision of the national improvement and efficiency strategy. IDeA is developing new proposals with NESTA to promote local innovation through the public services innovation laboratory, launched in March 2009.

Section 11

Requirement has been extended to a partnership therefore exemption has had to be removed

Children and young people's plan (CYPPs)

69. High performing local authorities (4 star) are currently exempt from the duty to provide a children and young people's plan. However all choose to do so, typically as the part of their sustainable community strategy that relates to children and young people. The Department for Children, Schools and Families introduced on 4 February 2009 new legislation to place the requirement to prepare and publish the CYPP on the Children's Trust (partnership) Board, of which the local authority is a key member. This will extend the ownership of a new children and young people's plan to all Children's Trust Board members. The new CYPPs are not expected to be in place until 2011, after the CPA ratings for authorities have been phased out. The proposals were strongly welcomed following an earlier consultation in 2008. The effect will be to remove the 4 star exemption to new CYPPs now that CPA has ended. This reflects the responsibility for the plan being extended beyond the local authority alone to help drive better partnership working.

Section 12

Consultation criteria

70. The Government has adopted a code of practice on public consultations. This consultation aims to follow the code criteria, which are set out below:

Criterion 1: When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full consultation code may be found at:
www.berr.gov.uk/whatwedo/bre/code/page46954.htm.

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process itself, please contact:

Albert Joyce
Communities and Local Government Consultation Co-ordinator,
Zone 6/H10
Eland House
Bressenden Place
London SW1E 5DU

or e-mail: consultationcoordinator@communities.gsi.gov.uk

Section 13

Summary of consultation questions

71. A summary of the consultation questions is set out below.

Question 1 (paragraph 28): Do you agree to the proposed approach to handling freedoms and flexibilities under CAA

Question 2 (paragraph 28): Given the new local performance framework and the provisions of the Sustainable Communities Act, are there any additional specific local freedoms worth considering?

Question 3 (paragraph 36): Do you agree that the power to trade should be extended to all local authorities?

Question 4 (paragraph 39): Should 'excellent' CPA rated FRAs, have access to bespoke freedoms and flexibilities for innovation in service delivery²⁵? Approval would be subject to clearance by ministers within 12 months of this consultation ending. As bespoke freedoms need to be innovative, we do not propose to impose a time-limit for their duration.

Question 5 (paragraph 47): Should the power to trade be extended to permit all fire and rescue authorities to trade in all of their services?

Question 6 (paragraph 47): If there is no agreement on question 5, should the FRA trading order be extended indefinitely?

Question 7 (paragraph 50): Should the freedom on how to spend fixed penalty notices from environmental crimes including litter, graffiti and flyposting, and dog control order offences be extended to all local authorities?

Question 8 (paragraph 58): Are there any ways in which you think local air quality management under Part 4 of the Environment Act 1995 can be further simplified?

²⁵ This could only be taken forward if the majority of respondents support the proposal.

Section 14

Responding to the consultation

This exercise is aimed at

72. We would like to hear from English local authorities, fire and rescue authorities, their partners and other stakeholders.

Bodies responsible for the consultation

73. Local Transformation Improvement and Efficiency Division in Communities and Local Government is running the consultation on behalf of central government.

Duration

Consultation start date: **6 May 2009**

Consultation end date: **28 July 2009**

How to respond

74. Please send your response, preferable by email to:

Email: LTIE@communities.gsi.gov.uk

Or by mail to:

Local Transformation, Improvement and Efficiency
Freedoms and Flexibilities Consultation
Department for Communities and Local Government
Zone 4/J6
Eland House
Bressenden Place
London SW1E 5DU

Fax No: 0207 944 4994

Telephone No: 0207 944 2193

Compliance with the code of practice on consultation

75. This consultation complies with the code of practice on consultation.

Annex A

Central government principles for achieving plan rationalisation 2002

Central Government Primary Principles for achieving Plan Rationalisation

- P1. There is a presumption against the imposition of any new planning requirement from Central Government or the expansion of requirements in respect of existing plans.
- P2. All planning requirements must be kept under review and should be subject to regular evaluation against the principles set out in this document. Evaluation should include consultation with representatives of local government.
- P3. A purpose of a planning requirement must be clear and necessary for the delivery of national policy priorities in line with the agreed central/local government shared priorities.
- P4. A plan must not be required where other mechanisms for achieving those purposes would be more effective, particularly mechanisms for performance assessment such as inspection and performance data or for performance improvement such as action plans. Alternatives must also be proportionate to the priority attributed to outcomes.
- P5. The necessity for a planning requirement, and the degree of prescription and detailed reporting for those that are retained should be considered in the context of authorities' performance.
- P6. The introduction and content of any new planning requirement should be subject to:
- the principles set out in this document
 - consultation with representatives of local government

Annex B

CPA 2005- Single and upper tier freedoms and flexibilities

Freedom	Transitional Arrangements	4 star	3 star	2 star	1 star	0 star
Exemption from requirement to produce a range of statutory plans:						
Local transport plan & bus strategy	1-2 years	•				
Rights of way improvement plan	1-2 years	•				
Air quality action plan	1 year	•				
Joint municipal waste plan	2 years	•				
Children and young people's plan	up to 1.5years	•				
Homelessness strategy	1-2 years	•				
Youth justice plan	1 year	•	•			
Home energy conservation report	1 year	•	•			
Removal of ringfencing:						
Removal of all DCFS (formerly DfES) revenue ring fence except for: -grants passported to schools -sure start -School Improvement Partners (until 07-08, when it will become unfenced for 4 star)	1 year	•				

Freedom (continued)	Transitional Arrangements	4 star	3 star	2 star	1 star	0 star
Removal of all DCFS (formerly DfES) capital ring fencing	1 year	•	•			
Removal of all other revenue ring fencing except for supporting people grant	1 year	•	•			
Removal of all other capital ring fencing	1 year	•	•	•		
Streamlined best value performance plan requirements:						
Freedom to provide only the minimum essential information BVPPs, and to annex the information to annual corporate plans rather than producing a separate BVPP	6 months for 4, 3 or 2 star moving to either 1 or 0 star	•	•	•		
Fixed penalty notices:						
Freedom over how to spend litter, dog-fouling, graffiti, flyposting, nuisance parking, abandoned vehicle fine income	1 year	•	•	•		
Freedom over how to spend street parking fine income (not yet in place)	N/A	•	•	•		
Power to trade:						
General power for local authorities to trade in function related activities	2 years	•	•	•	•	
Innovation Forum:						
Membership of the Innovation Forum	2 years	•				

Annex C

CPA 2005 District Council freedom and flexibilities

Freedom	Transitional Arrangements	Excellent	Good	Fair	Weak	Poor
Exemption from requirement to produce a range of statutory plans:						
Air quality action plan	1 year	•				
Joint municipal waste plan	2 years	•				
Homelessness strategy	1-2 years	•				
Home energy conservation report	1 year	•				
Removal of ringfencing:						
Removal of all revenue ring fencing	1 year	•				
Removal of all capital ring fencing	1 year	•	•			
Streamlined best value performance plan requirements:						
Freedom to provide only the minimum essential information BVPPs, and to annex the information to annual corporate plans rather than producing a separate BVPP	6 months for Excellent, or Good moving to either Fair, Weak or Poor	•	•			

Freedom (continued)	Transitional Arrangements	Excellent	Good	Fair	Weak	Poor
Fixed penalty notices:						
Freedom over how to spend litter, dog-fouling, graffiti, flyposting, nuisance parking, abandoned vehicle fine income	1 year	•	•			
Freedom over how to spend street parking fine income (not yet in place)	N/A	•	•			
Power to trade:						
General power for local authorities to trade in function related activities	2 years	•	•	•		
Innovation Forum:						
Membership of the Innovation Forum	2 years	•				

Annex D

Freedoms and flexibilities granted to FRAs under CPA in 2005

PERFORMANCE CATEGORY			
Excellent	Good	Fair	Weak and Poor
Capital system changes – Local Government Act 2003 Charging powers – Fire and Rescue Services Act 2004 Freedom to discharge core functions – Fire and Rescue Services Act 2004 Repeal of Section 19 – Local Government Act 2003			
Fire authority's corporate plan to act as it's performance plan provided minimum data included			
Trading powers			
Three year break from inspection (other than by agreement)		Targeted and lighter touch inspection and audit proportionate to performance	Targeted inspection
Bespoke freedoms and flexibilities negotiated between central government and fire and rescue authorities to help them achieve greater innovation			

Annex E

Evidence of impact

1. Freedoms and flexibilities

A baseline study, published in August 2006²⁶, on the use, awareness, and emerging impact of freedoms and flexibilities in local government was undertaken by Pricewaterhouse Coopers LLP and the Local Government Centre at Warwick Business School. The study found:

- there were high levels of awareness of freedoms and flexibilities by local authorities. These included, freedoms such as rationalisation of statutory planning requirements, inspection reduction, charging powers, reduction in ring-fencing, trading powers, council tax discount
- less high level usage of the package. Some authorities were more cautious or agnostic about the freedoms in the package, for example local authority trading was viewed as untested and risky or too complex, and the removal of revenue ringfencing as having little or no impact. The freedoms and flexibilities package was viewed by these authorities as overly bureaucratic, and was unlikely to provide any tangible improvements in services to local communities

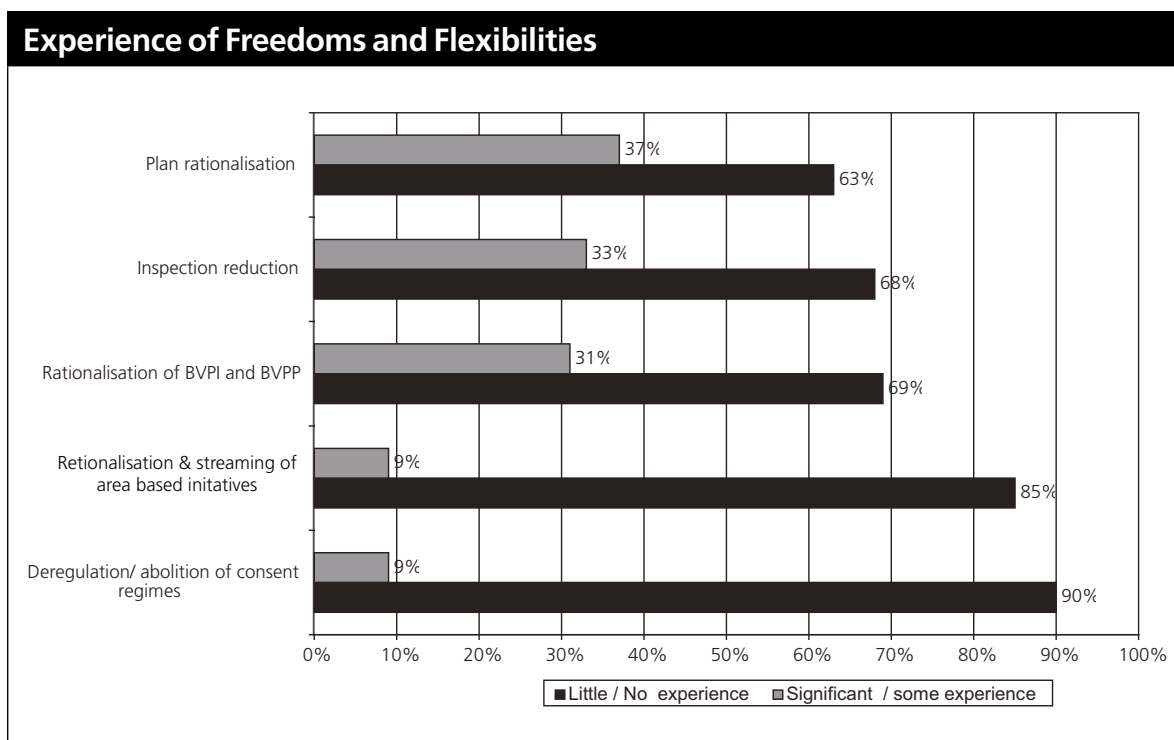
Local authority perception of levels of use of full range of freedoms and flexibilities package

Freedoms and Flexibilities	Level of use of each measure				
	Significant use	Some use	Little use	No use	Not applicable to my authority
Capital ring fencing reduction	7%	29%	22%	28%	14
Revenue ring fencing reduction	12%	41%	21%	21%	6%
Increased scope to charge for discretionary services	3%	26%	26%	46%	0%
Wider use of income from fines	6%	9%	29%	43%	14%
Capital system changes, including the Prudential Borrowing regime and associated measures	23%	37%	14%	20%	6%

²⁶ <http://www.communities.gov.uk/publications/localgovernment/evaluationfreedoms2>

Freedoms and Flexibilities (continued)	Level of use of each measure				
	Significant use	Some use	Little use	No use	Not applicable to my authority
Discretion to change council tax discounts & exemptions	18%	35%	9%	29%	9%
Trading powers included in the 2003 Local Government Act	3%	18%	21%	56%	3%
Powers to establish Business improvement districts	3%	12%	12%	65%	0%
Business growth incentive schemes	6%	9%	18%	68%	0%

- there was a perception amongst some authorities that the promised freedoms and flexibilities had not materialised as quickly as anticipated or had a significant impact. Of the measures listed below, there were none where a majority felt they had experienced a significant or some level of reduction



2. Plan rationalisation

The formative evaluation of community strategies: *Process Evaluation of Plan Rationalisation 2004-2007* published in August 2008²⁷ found that out of the 66 plans identified through the original DTLR study in 2002, it appeared that planning requirements on local government have been dramatically reduced and that the government's intention to reduce planning requirements by 75 per cent has been realised.

²⁷ <http://www.communities.gov.uk/publications/localgovernment/planrationalisation200407>

The formative evaluation also found that although excellent authorities are exempt from the requirement to produce certain plans produced by other authorities, this freedom has had relatively little impact so far with most excellent authorities continuing to produce numerous plans and stating that they were unlikely to stop producing them in the future. This was typically because they serve a useful purpose in terms of local planning or internal monitoring. This applies to both performance based freedoms for excellent authorities and plans that are no longer required of any authority.

Annex F

Impact Assessment – Local authorities trading powers

Summary: Intervention & Options		
Department /Agency: Communities & Local Government	Title: Impact Assessment of local authorities' power to trade following the end of categorisation under CPA	
Stage: Consultation	Version: 0.1	Date: 12 February 2009
Related Publications: Explanatory Memorandum to The Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) 2006 (S.I. No. 3102/2006)		

Available to view or download at:

http://www.opsi.gov.uk/si/em2006/uksiem_20063102_en.pdf

Contact for enquiries: Andrew Cornelius

Telephone: 020 7944 8766

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

The power to trade is currently related to performance and is available to local authorities categorised under comprehensive performance assessment (CPA) as "excellent", "good", "fair", "4 star", "3 star", "2 star" and "1 star". Assessment under CPA comes to an end in March 2009 and these categorisations will become increasingly out of date therefore. The Government needs to act to move to a successor arrangement to provide local authorities with long-term access to the power to trade.

What are the policy objectives and the intended effects?

The intention is to continue to provide local authorities with access to the trading powers. This will continue to enable local authorities to act to increase diversity and choice in public service delivery and to trade with the public and private sector where there is a strong business case to do so. Under the preferred option the power would be extended to just 39 authorities, evidence suggests that only a small percentage of these would make any significant use of the power. The combined revenue spending power of the additional 39 local authorities is 1 per cent of the local authority total spend.

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

1. Do nothing; 2. Trading powers to better performers only; 3. Preserve existing authorities' power to trade; 4. Trading powers to all authorities (Preferred Option). The preferred option provides opportunity for councils to generate revenue to invest in services, reduce council tax and seek collaborative opportunities with the private and voluntary sectors. The revenue spending power of the additional 39 authorities represents just over 1 per cent of local authority market activity and prevents authorities already trading from losing access to revenue streams. This is supported by LGA and Lyons.

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

There is an ongoing research programme to look into local authority procurement activity, including trading. The policy will be reviewed in parallel.

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

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



Sadiq Khan

Date: 1 May 2009

Summary: Analysis & Evidence			
Policy Option: 2		Description: Trading powers to better performers only	
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The proposal does not place any additional costs on local authorities
	One-off (Transition)	Yrs	
	£0	0	
	Average Annual Cost (excluding one-off)		
	£0		Total Cost (PV) £0
Other key non-monetised costs by 'main affected groups' Authorities trading may distract resources from core services, although a strong business case should prevent this; some authorities may lose access to the trading powers where they previously had access to them leading to loss of revenue and decreased innovation and collaboration between councils.			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The proposal does not place any additional costs on local authorities.
	One-off	Yrs	
	£0		
	Average Annual Benefit		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Improvement in quality of services provided by some councils through enhanced competition; opportunities for councils to make profit from managing their extended freedoms efficiently; better usage of resources for tax payers			
Key Assumptions/Sensitivities/Risks The powers in the 2003 Act are permissive powers and therefore do not place any direct monetised costs or benefits to local authorities, their trading partners or the private sector unless the powers are exercised. See Paragraph 30 of Annex.			

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £	
What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		Autumn 2009		
Which organisation(s) will enforce the policy?		n/a		
What is the total annual cost of enforcement for these organisations?		£0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£0		
What is the value of changes in greenhouse gas emissions?		£0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)		
Increase of £0	Decrease of	Net £		
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

Summary: Analysis & Evidence			
Policy Option: 3		Description: Preserve existing authorities power to trade	
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The proposal does not place any additional costs on local authorities
	One-off (Transition)	Yrs	
	£0	0	
	Average Annual Cost (excluding one-off)		
	£0		Total Cost (PV) £0
Other key non-monetised costs by 'main affected groups' Improving authorities without access to the trading powers would not gain access to the trading powers resulting in less scope for collaborative working with the private and voluntary sectors and authorities would not be able to realise the financial benefits of trading for a profit.			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The proposal does not place any additional costs on local authorities.
	One-off	Yrs	
	£0		
	Average Annual Benefit		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Improvement in quality of services provided by some councils through enhanced competition; opportunities for some councils to make profit from managing their extended freedoms efficiently and better usage of resources for taxpayers. Less authorities would be subject to the risks of undertaking trading activities.			
Key Assumptions/Sensitivities/Risks			
The powers in the 2003 Act are permissive powers and therefore do not place any direct monetised costs or benefits to local authorities, their trading partners or the private sector unless the powers are exercised. See Paragraph 30 of Annex.			

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £	
What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		Autumn 2009		
Which organisation(s) will enforce the policy?		n/a		
What is the total annual cost of enforcement for these organisations?		£0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£0		
What is the value of changes in greenhouse gas emissions?		£0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)		
Increase of £0	Decrease of £	Net £		
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

Summary: Analysis & Evidence			
Policy Option: 4		Description: Trading powers to all authorities (Preferred Option)	
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£0	0	There would be minimal costs in setting up a trading company and start-up costs for the operation. The required business case should demonstrate how a commercial return is to be achieved and start-up costs should be scoped in that consideration.
	Average Annual Cost (excluding one-off)		
	£0		
		Total Cost (PV)	£0
Other key non-monetised costs by 'main affected groups' Authorities trading may distract resources from core services, although a strong business case should prevent this, larger number of authorities subject to the risks inherent in undertaking trading activities (such as financial loss).			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£0		The proposal does not place any direct benefits on local authorities, although it does open up the opportunity to realise financial benefits from surpluses created through trading.
	Average Annual Benefit		
	£		
		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' Improvement in quality of services through enhanced competition, opportunity to generate revenue, and to seek collaborative and partnering opportunities with SMEs and the wider private and voluntary sectors. Revenue generated would enable authorities either to invest in public services or keep down Council Tax.			
Key Assumptions/Sensitivities/Risks			
The powers in the 2003 Act are permissive powers and therefore do not place any direct monetised costs or benefits to local authorities, their trading partners or the private sector unless the powers are exercised. The trading powers have safeguards in place to seek to protect against excessive risk.			

Price Base	Time Period	Net Benefit Range (NPV) £		NET BENEFIT (NPV Best estimate) £	
What is the geographic coverage of the policy/option?			England		
On what date will the policy be implemented?			Autumn 2009		
Which organisation(s) will enforce the policy?			n/a		
What is the total annual cost of enforcement for these organisations?			£0		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			N/A		
What is the value of the proposed offsetting measure per year?			£0		
What is the value of changes in greenhouse gas emissions?			£0		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		N/A	N/A	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)				(Increase – Decrease)	
Increase of £0		Decrease of £		Net £	
Key:	Annual costs and benefits: Constant Prices			(Net) Present Value	

Evidence Base (for summary sheets)

Trading powers

1. The Local Authorities (Goods and Services) Act 1970 governs the way in which local authorities are allowed to 'trade' with other public bodies. It authorises local authorities to enter into agreements with public bodies for the provision of goods, materials, and administrative, professional and technical services, for the use of vehicles, plant and apparatus, and for the carrying out of maintenance. There is also a power for the Secretary of State to designate by order that any person(s) exercising functions of a public nature shall be a public body for the purposes of the Act.
2. The Local Government white paper *Strong Local Leadership – Quality Public Services* (2001) announced a new comprehensive performance assessment (CPA) framework to assess local authorities' delivery of national and local priorities. The white paper promised that the highest performing local authorities would be given greater freedom and flexibilities.
3. Section 95 of the Local Government Act 2003 ("the 2003 Act") authorises the Secretary of State, by order, to permit best value authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions. This is commonly known as the power to trade. The power to trade is only able to be exercised through a local authority company (within the meaning of Part 5 of the Local Government and Housing Act 1989). Trading under the power needs to be directed towards the achievement of best value in the related function. This means that local authorities cannot set up trading arms unrelated to core services or functions.
4. The power may not be used to authorise best value authorities to trade in a statutory service which they are already obliged to provide with a person to whom they are already obliged to provide it, or to use the new powers where there are existing trading powers.

Trading order

5. The Local Government (Best Value Authorities) (Power to Trade)(England) Order 2004 ("the 2004 Order) provides the power to trade to those local authorities who have been categorised, by order under section 99 of the 2003 Act, as having attained a certain level of performance namely those authorities who have been categorised by order under as "excellent", "good" or "fair".

CPA framework

6. The Audit Commission independently carry out assessments, which placed councils into one of five categories - excellent, good, fair, weak and poor. The Government's stated policy was that those authorities categorised as excellent, good and fair would have access to greater powers to trade. In December 2005 the Audit Commission published a revised CPA framework, *The Harder Test* ("CPA 2005"), for England's 150 single tier and county councils. Under CPA – the harder test framework, councils receive an overall performance category ranging from 0 to 4 stars, with 4 stars being the highest. District CPA has not been altered to incorporate the harder test framework and district councils (which are not single tier councils) are not brought within that that framework.
7. In January 2006, the then Office of the Deputy Prime Minister (ODPM) launched a consultation exercise seeking views on the handling of freedoms and flexibilities under CPA 2005. The Government's preferred option was to extend freedoms and flexibilities downwards across star categories. This would mean that the trading powers, currently available to excellent, good and fair authorities, would be given to 4 star, 3 star, 2 star and 1 star authorities. Changes were not proposed for the freedoms and flexibilities of those district councils (which are not single tier councils), and they retain the current categorisation labels of excellent to poor.
8. Following consultation, the Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2006 ("the 2006 Order") amended the 2004 Order by applying the power to trade to those local authorities categorised in an order under section 99 of the LGA 2003 as "4 stars", "3 stars", "2 stars" and "1 star" as well as to those authorities categorised as "excellent", "good" or "fair".

Current proposal

9. The proposal is to extend the power to trade commercially to all local authorities. Responses to the consultation in 2006, on how to handle the trading powers under CPA 2005 received support from the LGA and a number of respondents to extend the power further to all authorities. The Lyons Inquiry also recommended that the power should be extended to all local authorities.
10. The terms of the trading order will continue to place safeguards on the use of the power, for example, by requiring an authority to prepare and approve a business case before trading. This requirement ensures that authorities manage risks effectively. However, local authorities will need to continue to base firmly any proposed trading activity on the need to secure value for money for the taxpayer and to have regard to relevant good practice.

11. The recommended option provides an incentive for improvement. The benefits of the preferred option include improvement in quality of services provided by councils through enhanced competition. There would be opportunity for more councils to make profit from having access to trading powers and more councils able to seek collaborative opportunities with other sectors from having access to trading powers.

Previous regulatory impact assessments

12. Full regulatory impact assessments were produced for the Local Government Bill 2003 and for S.I. 2004/No 1705, the Local Government (Power to Trade) (England) Order 2004 and the Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2006.

Research on use of trading powers

13. ODPM (now CLG) commissioned a baseline evaluation of the use, awareness, and emerging impact of freedoms and flexibilities in local government. The report was published as *Evaluation of Freedoms and Flexibilities in Local Government: Baseline Study* (CLG, September 2006, <http://www.communities.gov.uk/publications/localgovernment/evaluationfreedoms2>). In view of the relatively small size of the samples, caution should be used in drawing inferences about English local authorities as a whole. The report found that:
 - between 20 per cent and 30 per cent of respondents reported that their authorities were taking up trading and charging powers
 - three per cent of authorities saying they had made significant use of the power
 - eighteen per cent of authorities said they had made some use of it
 - fifty-six per cent said they had made no use at all of the power
 - however, this low level of use does not seem to be caused by a low level of awareness of the powers now available
14. Research by the LGA in November 2004 (<http://www.wlga.gov.uk/download.php?id=144&l=1>) found:
 - low level of use of the power with only 2 per cent of councils using their new powers to trade
 - a further 18 per cent intending to use the powers
 - sixty-four per cent of authorities using, or planning to use, the power identified raising revenue as a key objective

15. Research undertaken by INLOGOV for Communities and Local Government in November 2007 (<http://www.communities.gov.uk/publications/localgovernment/tradingresearchreport>) also found little evidence of authorities using or planning to use their increased power to trade, though upper tier authorities were more likely than districts to indicate a plan for marginal increases in trading activity. The report found:
- seventy-two per cent of local authorities surveyed trade, with an annual average income of £3m (this figure includes trading under other powers)
 - twenty-nine per cent of authorities trade in 2003 Act powers
 - overall, 25 per cent of local authorities aim to make surplus

Local authority coverage

16. The Government's approach to providing local authorities with access to the trading powers has been through its freedoms and flexibilities programme linked to CPA categorisation. This means that only those higher performing local authorities have had access to the power to trade. Subsequent trading orders have extended access to the trading powers to more CPA categories following CPA The Harder Test. Under the most recent categorisation order, the 349 higher performing local authorities have access to the trading powers, with 39 authorities currently restricted in their access to the trading powers. Whilst this means that 10 per cent of local authorities do not have access to the trading powers, this figure is not necessarily representative when you look at the 'economic activity' of the authorities which do not have access to the powers. Using the 2007/08 CLG Revenue Outturn data, the revenue spend of the authorities which do not have access to trading powers amounts to just over 1 per cent of the total local authority revenue spend.

Sectors and groups affected

17. The trading powers are enabling powers. It is expected that local authorities will seek to engage in trading activities only where the authority already has a strong track record of delivery in that service area. The proposal to extend the trading power potentially affects a range of sectors, groups and markets. It is anticipated that the proposal would have a positive competitive effect on the private sector due to local authorities engaging in new activities and stimulating markets and increasing competition. The powers allow local authorities to engage in activities which were also undertaken by the private sector; however, it is not necessary to assume that local authorities will necessarily be displacing business from the private sector. Trading activity could also create sub-contracting and partnering opportunities with local authorities. The trading powers can be expected also to be used to improve competition and contestability or to fill a gap in the market in the provision of services to the public.

Risk in the context of trading

18. Section 3 of the Local Government Act 1999 places a duty of best value on local authorities and other public bodies. This requires them to secure continuous improvement in the way in which they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. Trading under the 2003 Act powers needs to contribute towards best value in the related function.
19. The trading power permits local authorities to act in an entrepreneurial manner and engage in commercial activities. There are inherent risks in undertaking such activities especially when taxpayer's money is being used to fund these ventures. However, there are safeguards in place to ensure that trading is undertaken with an appropriate level of consideration by a local authority. The trading power permits local authorities to trade in function related activities only (i.e. authorities need to have the power to engage in an activity before they can trade in it). This should minimise the risk as a local authority should not be engaging in activities in which they do not have any experience or expertise of undertaking. A local authority must also prepare and approve, as appropriate within its governance arrangements, a business case before exercising the 2003 Act trading powers. This provides further safeguards for taxpayers' money by ensuring that there is a rationale and full consideration presented through the appropriate local authority executive arrangement before undertaking trading activities. In addition, a local authority has a duty ("the fiduciary duty") to ensure that arrangements must be made to ensure that taxpayer's money is spent appropriately. This duty has generally emerged from case law *c/f Roberts v. Hopwood* [1925] AC 578 and in *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768. The fiduciary duty will apply to a local authority seeking to trade.

Options analysis

Option 1 - 'Do nothing'

Risks

Diversity and choice in the delivery of public services would be restricted. Local authorities would be prevented from extending and improving the range of services they offer. The introduction of new players into the market would be restricted and Government policy in this area would be put into reverse.

Costs

- no authorities would have the necessary categorisation to be able to access the trading powers
- those authorities that have begun to trade successfully would have to start winding up their current trading activities

- there would be less scope for collaborative working with the private and voluntary sectors
- local authorities would not be able to realise the financial benefits of trading for a profit

Benefits

- Local authorities would not be subject to the risks of undertaking trading activities (such as financial loss)

Option 2 – ‘Grant trading powers to better performers only’

Risks

As with Option 1, this means that to some degree, diversity and choice in the delivery of public services would be restricted. Some local authorities would be prevented from extending and improving the range of services they offer.

Costs

- local authorities undertaking trading activities could result in distracting resources away from core public services, although a strong business case should seek to prevent this
- there is no direct correlation between the CPA and CAA framework and whatever decision was taken about the thresholds to be applied some authorities might lose access to the trading powers where they previously had access to them. CAA is also an assessment of the area, and not of the individual council's performance
- allowing even fewer authorities access to the trading powers would not help stimulate innovation and collaboration between councils

Benefits

- improvement in quality of services provided by some councils through enhanced competition
- opportunities for councils to make profit from managing their extended freedoms efficiently
- better usage of resources for tax payer

Option 3 – Preserve existing authorities power to trade

As with Options 1 and 2, this means that to some degree, diversity and choice in the delivery of public services would be restricted. Some local authorities that have improved in performance would be prevented from extending and improving the range of services they offer and authorities whose performance had reduced would continue to have access to the trading powers.

Costs

- preventing authorities with improving performance from accessing the trading powers would not help stimulate innovation and collaboration between councils
- improving authorities without access to the trading powers would have less scope for collaborative working with the private and voluntary sectors
- improving authorities would not be able to realise the financial benefits of trading for a profit

Benefits

- fewer authorities would be subject to the risks of undertaking trading activities (such as financial loss)
- improvement in quality of services provided by some councils through enhanced competition
- opportunities for some councils to make profit from managing their extended freedoms efficiently
- better usage of resources for tax payer

Option 4 - Grant trading powers to all authorities (preferred option)

Risks

When trading in their ordinary functions, authorities may be tempted to enter into areas of activity for which they are not best qualified and do not have the appropriate level of expertise rather than concentrating on improving delivery of their core functions. Whilst extending access to the trading powers to the 39 authorities is not without risk, there are safeguards in place to ensure that trading is undertaken with an appropriate level of consideration by a local authority (see paragraph 19 above).

Costs

- costs of drawing up business cases by more authorities to undertake trading
- local authorities undertaking trading activities could result in distracting resources away from core public services, although a strong business case should seek to prevent this
- larger number of authorities subject to the risks inherent in undertaking trading activities (such as financial loss)
- allowing fewer authorities access to the trading powers would not help stimulate innovation and collaboration within councils

Benefits

- there would be maximum scope for collaborative working with the private and voluntary sectors

- opportunity for more councils to make profit from having access to trading powers
- improvement in quality of services provided by councils, through enhanced competition
- more councils able to seek collaborative opportunities with other sectors from having access to trading powers

Preferred option

20. Option 4 is the preferred option. It provides the greatest flexibility while minimising the risks involved. The benefits of the preferred option include improvement in quality of services provided by councils through enhanced competition. There would be opportunity for more councils to generate revenue from having access to trading powers and more councils able to seek collaborative and partnering opportunities with SMEs and the wider private and voluntary sectors by having access to trading powers. Revenue generated would enable local authorities either to invest in public services or used to keep down council tax.
21. Evidence would suggest that of the 39 authorities that the power would be extended to, only a small percentage of those authorities would actually make any significant use of the power. The combined revenue spending power of the additional 39 local authorities is just over 1 per cent of the total local authority revenue spend for 2007-08 and therefore represents a very minor potential increase in local authority market activity. The preferred option would prevent those authorities already undertaking trading activities from having to wind down those activities and losing access to revenue generated through trading. The LGA have pressed and the Lyons Inquiry recommended that trading powers should be extended to all authorities to remove any uncertainty about continued access.

Small firms' impact test

22. Whilst the trading powers mean that authorities are potentially trading in competition with the private sector, various safeguards have been built in. Safeguards include requiring authorities to adopt a genuinely risk-based approach, based on a sound business case prepared for the proposed trading activity. The arrangements secure that authorities 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 new powers to trade will be subject to a requirement that it must take place through a corporate body formed by the authority. This means that surpluses on commercial operations under the new power will be subject to taxation in the same way as for other companies. Local authorities

like other bodies are subject to and must abide by competition law and State Aid principles.

23. The statutory guidance on local authority trading (<http://www.communities.gov.uk/publications/localgovernment/generalpower>) is clear that authorities should consider the requirements of competition law for any proposed charging and trading activities. The INLOGOV survey data suggests that 27 percent of trading authorities voluntarily undertook such assessments for trading preceding the 2003 Act. Case study evidence suggests that the impact of local authority trading on the business community can have positive effects. Some benefits identified were local opportunities for sub-contracting, and the delivery of back-office and transactional services to local community and not-for-profit sectors.

Competition assessment

24. A full competition assessment carried for the regulatory impact assessment published to coincide with the introduction of the Local Government Bill 2003.
25. The underlying assumptions in the analysis have not changed since then. The trading powers were made available to local authorities in 2004 and the new order merely makes some changes to the authorities covered following alterations to the CPA regime.
26. In summary the conclusions of the competition assessment were:
 - the new powers could lead to increased contestability and/or increased competition in markets (especially those which are currently inefficient or less active)
 - greater levels of trading by local authorities could lead to efficiency gains through increased economies of scale, and so could benefit consumers through lower prices, better quality, or both
 - there could however be a number of adverse effects arising from certain advantages that local authorities may possess, with consequent potential for the abuse of market power:
 - conflicts of interest may arise for local authorities in cases where they both regulate markets and participate in them (for example where withholding planning consents would create barriers to entry)
 - the legislation could potentially facilitate collusion between local authorities, thereby adversely affecting private sector businesses, either through increased information asymmetry or affecting bidding outcomes

- in terms of existing markets, local authorities may be able to exploit the benefits of an existing customer base and crowd out the private sector
- the legislation may alter the competitive process through increased consolidation and the possible exclusion of small businesses from particular markets

27. In relation to the bullet points above, it should be noted that:
- the power to trade will only be exercisable through a company structure, which will be subject to regulation in the same way as other commercial bodies (e.g. taxation). This will help ensure a level playing field with the private sector
 - local authorities, like other bodies, are subject to and must abide by competition legislation. Trading by local authorities may be subject to the provisions in the Competition Act 1988 and/or Articles 81 and 82 of the EC Treaty (see paragraph 9.5)
28. The Competition Act 1998 introduced two prohibitions which reflect Articles 81 and 82 of the EC Treaty respectively. The Chapter I prohibition covers agreements between undertakings that have the object or effect of distorting competition in the United Kingdom, or a part of the United Kingdom. The Chapter II prohibition makes unlawful conduct by one or more undertakings which may amount to an abuse of a dominant position in a market in the United Kingdom.
29. Authorities should consider any proposed trading activities very carefully against the requirements of competition law, consulting their own lawyers as necessary. Trading by local authorities may be subject to the provisions in the Competition Act 1998 and/or Articles 81 and 82 of the EC Treaty.
30. Whether or not a local authority may be considered an undertaking with respect to a particular activity (and therefore subject to competition rules), depends on whether the activity is 'an economic activity'. The new provisions do not make a significant difference in a local authorities' obligation to abide by competition rules.
31. In addition to the general consultation exercise for the 2003 Act, discussions were held with the Small Business Service and the Office of Fair Trading, CBI and other representative bodies for small businesses. The then ODPM also received and responded to written representations from the Federation of Small Businesses on their concerns with the charging and trading provisions in the Bill.

Monetised costs and benefits

32. It is not possible to monetise costs and benefits. The proposal will extend the power to trade under the 2003 Act to a further 39 authorities. We know from research that 29 per cent of authorities use the 2003 trading powers but that only 3 per cent make significant use of the powers. This would suggest that 11 authorities might avail themselves of the powers and between one and two authorities would make any significant use of the power. 38 out of the 39 authorities that the power would be extended to are small, lower-tier authorities and it would seem unusual for these authorities to make significant use of these powers.
33. Whilst we do not know how many services an authority would choose to trade in, the research suggest a cautious approach and it seems unlikely that any of these authorities would trade in more than 1 or 2 functions, at least initially. There would be minimal costs in setting up a trading company and start-up costs for the operation (for example, preparing a business case is unlikely to exceed £10,000 to £20,000). However the business case for an operation under the 2003 powers should demonstrate how a commercial return is to be achieved and set-up costs and start-up costs should be scoped in that document.

Impact assessments

Equality assessment

34. The trading power is a non-prescriptive enabling power and should not in itself have an adverse impact on equalities. When making use of the trading powers, as part of their legal duty, local authorities should consider whether there are any equality considerations that need to be addressed.

Health impact assessment

35. 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 local authorities should consider whether there are any adverse health impact considerations that need to be addressed.

Rural considerations

36. 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 local authorities should consider whether there are any adverse rural considerations that need to be addressed.

New burdens assessment

37. These are enabling powers and authorities are not obliged to use them. The trading power does not increase the cost of providing local authority services. Successful trading operations can be expected to generate revenue which can be used for further investment in services or for keeping council tax down.

Monitoring and evaluation

38. The Department for communities and local government will consider how the impact of the revised policy can be monitored and evaluated through its programme of local government research. Given the need to allow some time for the revised policy to take effect, such research is only likely to be carried out in the 2010-11 or later programmes.

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	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

Annex G

Impact Assessment – FRAs trading powers

Summary: Intervention & Options		
Department /Agency: Communities & Local Government	Title: Impact Assessment of providing Fire & Rescue Authorities (FRAs) with powers to trade in any of their functions	
Stage: Consultation	Version: 0.3	Date: 17 March 2009
Related Publications: Revision of Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 - Consultation Findings and Final Regulatory Impact Assessment		

Available to view or download at:

<http://www.>

Contact for enquiries: Anna Wadsworth

Telephone: 020 7944 5672

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 English Fire & Rescue Authorities (FRAs) ceases at midnight on 29 September 2009.

If powers are allowed to cease then FRAs would be deprived of existing income streams and thereby possibly increase the burden on tax payers.

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 English FRAs 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.

Option (c) is our preferred option as it has been our intention that FRAs should have the same scope of access to trading powers as local authorities and that these should be part of the proposed freedoms and flexibilities package.

Option (b) is our fall back position if there is no support for the preferred option.

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

Policy will be reviewed in line with other Freedoms & Flexibilities following introduction of Comprehensive Area Assessment.

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

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



Sadiq Khan

Date: 1 May 2009

Summary: Analysis & Evidence

Policy Option: B	Description: Extend current specified FRA Trading Order until revoked
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off	Yrs	
	£0	0	
	Average Annual Cost (excluding one-off)		
	£0		Total Cost (PV) £0
Other key non-monetised costs by 'main affected groups' Any costs incurred by FRAs in setting up and on-going running of trading companies would be recovered from fee income. Info on costs will be assessed following the set up and running of the trading companies.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£0		
	Average Annual Benefit		
	£		Total Benefit (PV) £
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. Info on benefits will be assessed following the set up and running of the trading companies.			
Diversity and choice of markets for consumer.			

Key Assumptions/Sensitivities/Risks

This assumes that the current status quo is maintained.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £	
What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		Prior to 30 Sept		
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 £0	Decrease of	Net £		
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

Summary: Analysis & Evidence

Policy Option: C	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'	
	One-off		
	£0	0	
	Average Annual Cost (excluding one-off)		
	£0	Total Cost (PV)	£0
Other key non-monetised costs by 'main affected groups' Any costs incurred by FRAs in setting up and on-going running of trading companies would be recovered from fee income. Info on costs will be assessed following the set up and running of the trading companies.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
	One-off		
	£0		
	Average Annual Benefit		
	£	Total Benefit (PV)	£
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. Info on benefits will be assessed following the set up and running of the trading companies. Wider diversity and choice of markets for consumer.			

Key Assumptions/Sensitivities/Risks

This assumes that FRAs will have same powers as Local Authorities and that they will set up a trading company.

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	Prior to 30 Sept

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 £0	Decrease of	Net £		
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 and 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 English FRAs 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 fire and rescue authorities.
4. The FRA power to trade was originally intended to expire on 29 September 2007 when it was to have been linked to the comprehensive performance assessment (CPA). Since CPA was replaced by CAA in April 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 and 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.

5. 35 responses were received with 33 answering the questions posed in the consultation. From the 35 responses received:
 - twenty-seven favoured Option B (77 per cent) – this was supported by both FRAs and industry
 - five favoured Option C (14 per cent) – only FRAs supported this option
 - two declined to give a preference for their option (6 per cent)
 - one respondent supported Option A (3 per cent)
6. 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.
7. Further comments to support Option B included:
 - it will enable evidence based decisions to be made
 - maintains status quo
 - 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
8. 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.
9. 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.
10. 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.
11. 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.
12. However respondents from industry had concerns that the powers in this option would preclude any element of control on the activities of FRAs. Further research into the benefits, costs and risks of trading on both FRAs and businesses was seen to be needed before any extension of trading powers was given.

13. 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.
14. 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.
15. 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.
16. 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.
17. Two FRAs indicated that they currently did not use the trading powers and they did not indicate a preference for their option.
18. 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).

Policy objective

19. To examine the options to replace the current transitory trading powers for fire and rescue authorities under the Local Government (Best Value Authorities) (Power to Trade) (England (Amendment) Order 2004.

Policy options

20. Three options have been identified:
 - option A: Do nothing and let powers cease
 - option B: Extend existing specified FRA trading order until revoked or
 - option C: Provide FRAs with powers to trade in any services which they are not under a duty to provide

Option A: Do nothing and let powers cease

21. This would remove existing powers from FRAs.

Option B: Extend existing specified FRA trading order until revoked

22. 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

23. 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

24. Businesses (including small and medium sized enterprises), consumers, public and voluntary sectors.
25. 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

26. This option would mean that FRAs would be deprived of existing income streams and thereby possibly increase the burden on tax payers. Some FRAs are already trading and there would be resources (cost and time) involved in winding down existing schemes.
27. 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) and (C) the choice of whether to trade or not is up to each individual FRA.

28. 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.

Benefits

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

Option B: Extend existing specified FRA trading order until revoked

Costs

31. There would be costs in administering the trading company and preparing business cases if extension of powers was required. Any costs incurred by FRAs in setting up and on-going running of trading companies would be recovered from fee income.
32. Suppliers have potential to lose income through FRAs offering competing services in market.
33. Info on costs will be assessed following the set up and running of the trading companies.

Benefits

34. There is potential for FRAs to continue to generate income which would be distributed back into their budgets to help fund other projects. However FRAs would not be in line with other local authorities with regard to full trading powers and potential generation of income.
35. 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.
36. Info on benefits will be assessed following the set up and running of the trading companies.

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

Costs

37. Costs for both FRAs and suppliers would be similar to those in Option B. With wider trading powers it may be more cost effective for FRAs to administer a trading company.

38. Info on costs will be assessed following the set up and running of the trading companies.
39. At present only those English FRAs 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 named access to up to 10 functions out of a potential list of 30. Only 1 FRA is known to have set up a trading company to date.
40. Extending the powers would give all 46 FRAs potential access to all functions which they are not already under a duty to provide. If all FRAs choose to exercise these powers then this could alter the competition in the market considerably.
41. 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.

Benefits

42. FRAs would have the same scope of access to trading powers as local authorities within the freedoms and flexibilities package.
43. Similar benefits to Option B with wider potential for FRAs to generate income which would be distributed back into their budget.
44. Info on benefits will be assessed following the set up and running of the trading companies.

Race equality assessment

45. 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

46. 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

47. 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)

48. 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.
49. 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 5 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.
50. A small firms' impact test (SFIT) was sent to over 300 businesses in 2007. One direct response to the questionnaire was received from a small and medium sized enterprise (SME). They concluded that there was no impact to their business from current trading practices by FRAs and they did not perceive that extending the order would have any relevant costs or savings to them.
51. Further information and new evidence is being sought from SMEs during the 12 week consultation on freedoms and flexibilities.

Competition assessment

52. 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.

53. 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
54. 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.
55. In July 2006 the Chief Fire Officers' Association sent out a survey to all the English FRAs. 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.
56. 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

57. 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.
58. 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.
59. 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

60. 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

61. The Department recommends Option C as the preferred option.
62. It has been the Government's intention that FRAs should have the same scope of access to trading powers as local authorities and that these should be part of the proposed freedoms and flexibilities package.
63. Trading will help create a dynamic and entrepreneurial public sector which will increase diversity and choice in the delivery of public services. By setting up trading companies FRAs will be subject to the same conditions as private sector thus ensuring a level playing field.
64. 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 maintain the status quo but would mean that FRAS would not be in line with other local authorities with regard to trading powers and potential generation of income.
65. All options will be considered in light of responses to the consultation on freedoms and flexibilities.

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	No
Small Firms Impact Test	Yes	No
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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