

Gloucestershire Fire & Rescue Service

Subject: ENFORCEMENT PROCEDURES

1 INTRODUCTION

For the purposes of The Regulatory Reform (Fire Safety) Order 2005 (the Order), the “enforcing authority” means the Fire and Rescue Authority (the Authority) for the area in which the premises, to which this Order applies are, or are to be situated.

The effectiveness of legislation in protecting those who may be harmed by fire depends crucially on the compliance of those regulated. It is recognised that most businesses wish to comply with the law. Care therefore, will be exercised to ensure that the business community, and others, meet their legal obligations without unnecessary expense, whilst taking firm action including prosecution, against those who show contempt for the law or act irresponsibly.

2 INSPECTION ACTIVITY

2.1 Responsible Person

The process of enforcement can only be taken forward by dealing with the responsible person and in this respect “responsible person” [as defined in The Regulatory Reform (Fire Safety) Order 2005] means –

(a) in relation to a workplace, the employer, if the workplace is to any extent under his/her control;

(b) in relation to any premises not falling within paragraph (a)

(i) the person having control of premises (as occupier or otherwise) in connection with the carrying on by him/her of a trade, business or other undertaking (for profit or not); or

(ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.

2.2 In the case of premises in multiple occupation, the employer is under an obligation to comply with the Order, insofar as his/her control extends. Where a person other than an employer exercises control (such as the common parts of multi-occupied premises) legal responsibility rests on such persons. The inspector must use his/her powers under the Order to ascertain control, and therefore an obligation to comply with the Order. In some cases an informal approach to the responsible person may prove to be the most appropriate. However, where there is no transparency, investigation may require the examination of documents, such as leases and contracts. The extent of the duty placed on the employer/owner will be established by considering how reasonable/achievable improvements can be made to the means of escape for relevant persons on the premises.

2.3 As in paragraph 2.2 where matters of compliance are beyond the control of the employer, the duty is placed on others (see 2.1) according to the extent of their control over the workplace. However where matters are beyond even their control the onus passes back to the employer to resolve the matter.

3 ENFORCEMENT ACTIVITY

3.1 Enforcement will generally result in the following two areas of activity:

(a) Informal Notification - by which responsible persons are advised of areas of non-compliance and where appropriate, methods of remedy (verbal or letter of non-compliance).

(b) Formal notices - served on the responsible person (notices).

3.2 For a breakdown of the enforcement expectation (see section 8).

3.3 **Premises Containing No or Nominal (Less Serious) Fire Safety Deficiencies**
Compliance Level 1-2

Inspections with no or nominal (less serious) fire safety deficiencies would include those where a small number of less serious contraventions are found (e.g. obstructed fire alarm call points, poor housekeeping or lack of record keeping), without any previous history. If the management approach is acceptable and the responsible person demonstrates a willingness to take responsibility for fire safety measures then the following procedure should be adopted:

- On completion of an audit based inspection, (or a specific inspection in the case of a complaint), where the premises is found to be in order. No further action on site may be required by the inspector.
- Where only less serious fire safety deficiencies exist and the indicated enforcement expectation is to educate and inform, the best practice advice given verbally or using a letter of non-compliance are the options.
- In respect to large organisations, a copy of the letter of non-compliance may also be sent to the legally responsible person (company secretary etc).
- A follow-up visit may be considered unnecessary.
- Where fire safety deficiencies are found which are dealt with during the course of the inspection this will be documented either on the audit form or as a note for file and placed on file.

3.4 **Premises Containing Moderate Fire Safety Deficiencies**
Compliance Level 3-4

Such workplaces would exhibit numerous less serious contraventions with a previous history of other less serious issues, and where the management is considered poor.

- On completion of the fire safety audit of the premises, the inspector will calculate and confirm the enforcement expectation in accordance with the audit form.
- Where the enforcement expectation is prosecution, the matter will be referred to senior fire safety management for a decision and the responsible person advised of this action.
- Where the enforcement expectation is the issue of an enforcement notice, the inspector will inform the responsible person that the matter will be referred to the fire safety officers line manager for approval and that one may be served in due course.

- On return to the fire safety department the inspector will liaise with his/her line manager who will review the facts, utilise the EMM and if appropriate produce the enforcement notice and serve it on the responsible person. The notice will require that person to remedy the failures identified in the schedule to the notice within the specified time period. (Not less than 28 days)
- Where the line manager (or any other person with similar, current experience) is not available and the issue is so serious that immediate action is required the fire safety officer can produce and issue the notice and inform the line manager at a later date.
- In the case of large organisations with a number of premises, the correspondence should be sent to the legally responsible person (company secretary etc.) for the body corporate and copied to the local manager.
- The notice shall, for the most part, be served on the responsible person, however where such action cannot be taken, it will be necessary to look to other persons who have "to any extent control of the workplace". In the case of corporate employers, it is the body corporate that is the responsible person (the employer), and a local manager takes the status of an employee through whom the employer exerts overall control. Therefore the notice will generally be served on the company secretary at their registered offices, with a copy sent to the manager of the premises concerned.
- Consultation, prior to the issue of the enforcement notice, shall take place with any other authority with an interest in the premises concerned.
- The Authority may withdraw the enforcement notice at any time before the end of the period specified in the notice.
- The Authority may grant an extension, or further extension, of time specified for the steps to be taken if an appeal against the notice is not pending.
- On satisfactory completion of all items contained within the notice the responsible person should be informed in writing.
- Where there has been a failure to comply with the notice, or progress is unsatisfactory, then the responsible person shall be informed, in writing, that the matter is being referred for the consideration of legal action after consultation with the line manager.

3.5 **Premises Containing Major (Serious) Fire Safety Deficiencies** Compliance Level 4-5

These premises would have serious deficiencies that may require structural alterations or have a requirement for comprehensive fire safety systems. The management would demonstrate a failure to take effective responsibility, with a history of numerous previous contraventions. In this respect:

- Where the enforcement expectation, in accordance with the EMM is prosecution, the matter will be referred to senior fire safety management for a decision and the responsible person advised of this action.
- Where the enforcement expectation, in accordance with the EMM is to serve an enforcement notice and the risk to employees in case of fire is such that the service of an enforcement notice cannot be delayed, the inspector will, liaise with his/her line

manager who will review the facts and then serve an enforcement notice as soon as practicable on the responsible person if appropriate. The notice will require the responsible person to remedy the failures identified in the notice within a time period specified in the notice (but not less than 28 days).

- Where the line manager (or any other person with similar, current experience) is not available and the issue is so serious that immediate action is required the fire safety officer can produce and issue the notice and inform the line manager at a later date.
- In all other cases, consultation prior to the issue of the enforcement notice, shall take place with any other authority with an interest in the premises concerned. Moreover, in all cases where the enforcement notice would oblige a person to alter premises, before serving an enforcement notice, consultation must occur in accordance with article 30 (5) (a) – (e).
- The Authority may withdraw the enforcement notice at any time before the end of the period specified in the notice.
- The Authority may grant an extension, or further extension, of time specified for the steps to be taken, if an appeal against notice is not pending.
- On satisfactory completion of all items in the notice, this fact should be confirmed in writing to the responsible person.
- Where there has been a failure to comply with the notice, or progress is unsatisfactory, then the responsible person must be informed, in writing, that the matter is being referred for the consideration of legal action.

3.6 **Premises with Extreme Deficiencies** Compliance Level 5

If the Authority is of the opinion that the risk to persons in case of fire is so serious it will be necessary for the Authority to prohibit or restrict the use of those premises.

- On completion of the inspection of the premises, the inspector will liaise with his/her line manager who will review the facts and then calculate and confirm the enforcement expectation in accordance with the EMM, so that any consideration of prosecution can be justified.
- If appropriate a prohibition notice should be prepared and served on the responsible person. The works or actions specified in the notice should only serve to reduce the excessive risk to an acceptable level. It is not the intention that any prohibition notice served should be used to achieve a satisfactory standard. Less serious matters would be dealt with using an enforcement notice.
- Before serving any notice in respect to a house in multiple occupation, the Authority shall notify the Local Authority Housing Department of its intention and the scope of the prohibition or restriction. When the enforcement notice requires a person to alter premises, before serving it consultation must occur in accordance with Article 30 (5) (a) – (e).
- Where a prohibition notice has been served, the Authority may withdraw the notice, in writing, at any time.

4 ENFORCEMENT FOLLOWING A FIRE OR COMPLAINT RELATING TO STANDARDS OF FIRE SAFETY

- 4.1 Any response to a fire or a complaint relating to standards of fire safety will be subject to a fire safety audit and level of enforcement in accordance with the Authority policy.
- 4.2 Enforcement action for nominal or less serious deficiencies should be dealt with as detailed above. In cases of serious or so serious deficiencies where harm to persons could have resulted, evidence should be gathered for a potential prosecution. The minimum response to a complaint or fire in a workplace will involve a full fire safety audit and enforcement as necessary.

5 ENVIRONMENT AND SAFETY INFORMATION ACT 1988

- 5.1 An Act to establish public registers of certain notices served concerning health, safety and environmental protection; and for related purposes.
- 5.2 Authorities will, in accordance with the Act, maintain a public register of notices served. These notices known as “relevant notices” are the:
 - (a) Alterations Notice
 - (b) Enforcement Notice
 - (c) Prohibition Notice

6 FIRE-FIGHTERS’ SWITCHES FOR LUMINOUS TUBE SIGNS

Where fire-fighters’ switches for high voltage luminous tube signs are installed or proposed to be installed in or on premises to which the Order applies. The Authority may, if the position, colour and marking does not comply with the current regulations of the Institution of Electrical Engineers, serve a notice on the responsible person specifying any such reasonable requirements as the Authority may impose to secure that the cut-off switch is readily recognisable by and accessible to fire-fighters.

7 ENFORCEMENT MANAGEMENT

- 7.1 All staff that take enforcement decisions will be required to be mindful of the guidance in the ‘Enforcement Management Model’ (EMM) issued by the Health and Safety Commission.

8 ENFORCEMENT EXPECTATION

- 8.1 The Authority will ensure that any enforcement action taken has been:
 - Proportional to the circumstances
 - Consistent as to the actions and outcome
 - Targeted at more serious risks
 - Transparent to all responsible persons
- 8.2 The adoption of the EMM will enable the Authority to demonstrate that the final action taken:
 - Is supported by HSE, HELA and ODPM Guidance
 - Is supported by departmental and quality assurance procedures
 - Demonstrably meet the principles of GFRS’s enforcement policy
 - Was based on a documented decision making process

- Incorporated professional judgements
- Was based on a framework for consistency
- Provides evidence of 'professional' decision making
- Relied on guidance and benchmarks relating to the risk and hazards of fire and its control
- Has not been a procedure in isolation
- Did not restrict a Fire Safety Inspector's discretion or direct enforcement
- Is in accordance with the aims of the Government's Enforcement Concordat

As a general rule the following compliance levels warrant the action suggested

Compliance level 1 Talk to employer & a note for file, no follow up.

Compliance level 2 Talk to employer or letter of non-compliance detailing deficiencies, no follow up.

Compliance level 3 Talk to employer & letter of non-compliance or an enforcement notice, detail deficiencies, follow up required.

1. Follow up satisfactory; no further action.
2. Follow up unsatisfactory; issue enforcement notice if a letter of non-compliance initially served or in line with 3 below if enforcement notice in force.
3. Time expired, extension of time or prosecution.

Compliance level 4 As level 3 but serve an enforcement notice and reduce time to put right within the scope of due diligence (minimum 21 days from serving the notice).

Compliance level 5 Prohibition and most likely prosecution as major contraventions will most likely have been carried out.