

# Suffolk Fire and Rescue Service



## Protection Policy

### The Regulatory Reform (Fire Safety) Order 2005 Enforcement Procedures Policy

Guidance for Protection Auditors on the use of informal enforcement, Enforcement Notices, Prohibition Notices, Alteration Notices, Action Plans, response to fires, response to fire safety complaints, compliance with the Environment and Safety Information Act 1988, Firefighters switches and enforcement management/expectation.

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#### 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.

The effectiveness of legislation in protecting those who may be harmed by fire depends on the compliance of those regulated. It is recognised that most businesses wish to comply with the law. Care will be exercised to ensure that the business community, and others, meet their legal obligations without unnecessary expense and our Enforcement Policy Statement outlines the principles that we apply as a service to the public of Suffolk. However, we will take firm enforcement action, including prosecution, against those who show contempt for the law or act irresponsibly.

## 2 Inspection Activity

### 2.1 Responsible Person

Enforcement can only be progressed by dealing with the responsible person and, in this respect, 'responsible person' (as defined in The Order) (his/him is not gender specific) means:

- (a) in relation to a workplace, the employer, if the workplace is to any extent under his 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 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.

2.3 The inspector will use his/her powers under the Order to ascertain the extent of control and the obligation to comply with the Order. In some cases an informal approach to the responsible person may prove to be most appropriate. However, where extent of control is not obvious, documents such as leases and contracts may be examined.

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

## 3. Enforcement Activity

3.1 Enforcement will generally result in:

- (a). Informal Notification – where responsible persons are advised of areas of non-compliance and, where appropriate, methods of remedy. This may include verbal advice or the issue of a 'Notification of Deficiencies' letter (with any accompanying advice as appropriate) or an Action Plan.
- (b). Formal Notices - served on the responsible person.

3.2 Enforcement expectation is detailed at paragraph 7.

### 3.3 Broadly Compliant Premises (Compliance Level 1) with No or Nominal (Less Serious) Fire Safety Deficiencies:

Inspections revealing no, or nominal, fire safety deficiencies, ie; those where a small number of less serious contraventions are found (e.g. obstruction of a fire alarm call point, poor housekeeping or lack of record-keeping), without any negative 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 form, (or a specific inspection in the case of a complaint), where the premises is found to be Broadly Compliant Inform and Educate the approach should be to give verbal advice and information.
- The advice given will be captured in the Audit Gathering Form and if necessary transferred to a Note for Case for audit trail.

### 3.4 Premises with less serious Minor Fire Safety Deficiencies:

- Where less serious minor fire safety deficiencies exist and the indicated enforcement action is Notification of Minor Deficiencies, advice given shall be confirmed in writing to the responsible person in a Notification of Deficiencies letter.
- The NOD should always be 'addressed' to the legally responsible person, ie; the body corporate (eg; FOA 'The company secretary', etc).
- For larger organisations, for example; with a Head Office remote from the audited premises, the Notification of Deficiencies letter should also be copied to a suitable recipient at the local premises, eg; the manager.
- A follow-up visit will always be arranged. This may on occasions be discharged by a phone call.
- Identified deficiencies that are dealt with during the course of the inspection will be documented and placed on file.

### 3.5 Premises with less serious Fire Safety Deficiencies:

Where the premises exhibit numerous, less serious contraventions with a history of other less serious issues, and where the management is considered poor:

- On completion of the premises audit, the inspector will calculate and confirm the enforcement expectation in accordance with the Enforcement Management Model (EMM as used by the health and Safety Executive). If the EMM confirms the enforcement expectation, a Notification of Deficiencies will be issued.
- The NOD should always be 'addressed' to the legally responsible person, ie; the body corporate (eg; FOA 'The company secretary', etc).

- For larger organisations, for example; with a Head Office remote from the audited premises, the Notification of Deficiencies letter should also be copied to a suitable recipient at the local premises, eg; the manager.
- A follow-up visit will always be arranged.
- Identified deficiencies that are dealt with during the course of the inspection will be documented and placed on file.
- The application of the EMM will take into account a series of factors relevant to the responsible person which may influence the enforcement decision. This may allow consideration of an 'Action Plan' or may necessitate the issue of an Enforcement Notice.
- Any other authority with a known interest in the premises will be informed of the actions of the Fire and Rescue Authority when practicable.
- At or prior to its expiry, on satisfactory or sufficient progress towards completion of all items contained within the Notice, the responsible person should be informed in writing and the Notice has been complied with. Any outstanding minor item may be recorded on this letter.
- Where progress is unsatisfactory and/or there has been failure to comply with the Notice at its expiry, the responsible person shall be informed in writing that the matter is being referred for consideration of legal action.
- Application of the EMM will also take into account a series of factors relevant to the responsible person which may influence the enforcement decision. This may result in consideration of the more informal 'Action Plan'.
- SFRS should, where appropriate, effectively consult with the responsible person to minimise the costs of compliance for the business by ensuring that any action eventually taken is proportionate to the risks. Therefore it is suggested that unless immediate formal enforcement action is required, inspectors should provide an opportunity to discuss the circumstances of each case and if possible resolve points of difference.
- One method to do this is the use of an 'Action Plan' (informal enforcement). The aim of an Action Plan is to prioritise the attention and effort of the responsible person on what preventive and protective measures are necessary to either reduce the identified risk(s) to an acceptable level, or to eliminate the risk.
- All priorities and timescales stated within the Action Plan should (where possible) be agreed with the responsible person. These priorities and timescales should be derived from the inspecting officer's judgement in

consultation with their office manager based on the circumstances of the case and CLG guidelines.

- Ongoing review and follow-up activity of the progress of the action plan should be proportionate to the circumstances of the case.

### 3.7 Premises with Major (Serious) Fire Safety Deficiencies:

Where a premises has serious deficiencies requiring structural alterations and/or a requirement for comprehensive fire safety systems; or where the management of a premises demonstrate a failure to take responsibility, or display a history of numerous previous contraventions; or if the Audit process highlights 'safety critical' areas, that are considered to place relevant persons at greatest risk in case of fire;

- Where safety critical Articles are 'non-compliant' and the deficiency is major and the risk high, the EMM would indicate that prosecution should be considered. However, all aspects of the EMM must be applied to determine whether to proceed.
- Where the enforcement expectation identifies prosecution action to be considered, the matter should be referred through line-management and a case review sought via Directorate Investigations Team (DIT).
- Following a prosecution, the premises should be subject to an audit inspection within 6 months or less following line-management review.
- Where the enforcement expectation indicates the service of an Enforcement Notice, and the risk to persons in case of fire is such that the service of an enforcement notice cannot be delayed, the inspector will serve an Enforcement Notice as soon as practicable.
- In all cases where the Enforcement Notice would require a person to alter premises, consultation must be undertaken in accordance with Article 30 (5) (a) – (e). In all other cases, prior to the issue of the Enforcement Notice, wherever practicable the Fire and Rescue Authority should inform any other authority with an interest in the premises.
- Where progress is unsatisfactory, and/or there has been failure to comply with the Notice at its expiry, the responsible person shall be informed in writing that the matter is being referred for consideration of legal action.

Please refer to Enforcement Notice Policy.

### 3.8 Premises with Extreme Deficiencies

If the Fire and Rescue Authority believes that the risk to persons from fire is serious as to place relevant persons at risk of death or serious injury, it will be necessary to prohibit or restrict use of those premises.

**This procedure sits outside the Initial Enforcement Expectation and the EMM process.**

- Where it is not possible or practicable to reduce the excessive risk to an acceptable level at the time, a Prohibition Notice should be prepared and served on the responsible person, following the procedure in Prohibition Notice Policy.
- The works or actions specified in the Prohibition Notice should serve to reduce the excessive risk to an acceptable level even though some contraventions may still be evident.
- When suitable measures have been taken on the premises such that the excessive risk has been reduced to an acceptable level, the Fire and Rescue Authority may withdraw the notice.
- It is not the intention that the withdrawal of the Prohibition Notice should be used to indicate a satisfactory standard. Less serious matters may be indicated in an Enforcement Notice, or NOD in the usual way.

#### 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, may be the subject of a fire safety audit and subsequent enforcement in accordance with the Authority policy.
- 4.2 Enforcement action should be dealt with as detailed above. The minimum response to a complaint or fire in a premises will involve an investigation to determine whether a full fire safety audit is needed.
- 4.3 The stats support team interrogate the Combined Control database on a weekly basis and transfer records of commercial fire incidents onto the M: drive. This information is viewed by the Fire Safety Tech Support officer who reviews the incident log and then makes an informed decision as to which incidents trigger a post-fire Audit requirement.
- 4.4 Those requiring audits are listed and Fire Command Support Admin raise a FJMS job for each that is issued to the appropriate office manager.

#### 5. Environment and Safety Information Act 1988

- 5.1 This Act requires Suffolk Fire and Rescue Service and other local authorities to maintain a register of notices served concerning health, safety and environmental protection and for related purposes.
- 5.2 Suffolk Fire and Rescue Service contribute to a national register containing details of notices issued under fire safety legislation; the register is available for public inspection without charge on the Chief Fire Officers Association website (registration not required to view entries).  
<http://www.cfoa.org.uk/enforcement-db>

#### 6. Firefighters Switches for Luminous Tube Signs

Where Firefighters 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 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 and accessible to firefighters in accordance with relevant standards.

## 7. Enforcement Expectation

Enforcement will follow the principals stated in the Enforcement Policy Statement. (This Policy Statement may be found on Documentum).

### 7.1 The Authority will ensure that any enforcement action is:

- Proportional to the circumstances
- Consistent to actions and outcome
- Targeted at serious risks
- Transparent to all responsible persons
- Based on a valid assessment of fire precautions and risk

### 7.2 Adoption in full of the EMM will enable the Authority to demonstrate that the action taken was:

- within Health and Safety Executive (HSE), Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA) and Department for Communities and Local Government (DCLG) Guidance
- subject to departmental procedures
- able to meet the principles of Suffolk Fire and Rescue Service's enforcement policy statement
- based on a documented decision making process
- based upon professional judgement
- based on a framework for consistency
- evidenced by 'professional' decision making
- taken on guidance and benchmarks relating to the risk and hazards of fire and its control
- not a restriction of a Fire Safety Inspector's discretion or direct enforcement in accordance with the aims of the Government's Enforcement Concordat , and the Regulator's Compliance Code.

About this document

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**EIA - This Document Does Not Require an EIA, its content is technical.**

**Content approval**

This is issue two of this document.  
The information contained in this document is approved for use.

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