

## **West Sussex Fire and Rescue Service**

### **ENFORCEMENT PROCEDURES**

This guidance is for Fire Safety Inspectors on the use of informal enforcement, enforcement notices, prohibition notices, responses to fires and complaints relating to standards of fire safety, compliance with the Environment and Safety Information Act 1988, fire-fighters' switches and enforcement management/expectation.

#### **1. INTRODUCTION**

1.1 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. This may include the issue of a Notification Of Fire Safety Deficiencies Form (with any accompanying advice as appropriate) completed on site and left with the responsible person or their representative.

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

- 3.2 For a breakdown of the enforcement expectation ([see 8](#)).

- 3.3 Premises Containing No or Nominal (Less Serious) Fire Safety Deficiencies - 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, in accordance with the Enforcement Management Model ([EMM](#)) is to educate and inform, the best practice advice given shall be confirmed in writing to the

responsible person using a notification of fire safety deficiencies wherever possible.

- In respect to large organisations, a copy of the notification of fire safety deficiencies 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 documents and placed on file.

#### 3.4 Premises Containing Moderate Fire Safety Deficiencies - 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 EMM.
- 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 of this fact and that one will be served in due course. A notification of fire safety deficiencies may be issued to the responsible person as a prelude to the serving of the notice.
- On return to the fire safety base the inspector will produce the enforcement notice and serve it on the responsible person with immediate effect. 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)
- In the case of large organisations with a number of premises, a copy of the informal notification and/or notice should be sent to the legally responsible person (company secretary etc.) for the body corporate.
- When considered satisfactory this fact should be confirmed in writing to the responsible person.
- 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.

3.5 Premises Containing Major (Serious) Fire Safety Deficiencies - 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, serve an enforcement notice as soon as practicable on the responsible person. 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).
- 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 - 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 calculate and confirm the enforcement expectation in accordance with the EMM, so that any consideration of prosecution can be justified.
- 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 and to agree the most appropriate legislation to use. 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 an inspection for dangerous conditions and for indications of weakness in management control, in order to determine whether a full fire safety audit is needed and enforcement is 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 LUMINOUS TUBE SIGNS**

- 6.1 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.
- 7.2 Where it is considered necessary to focus attention on what preventive and protective measures are necessary to achieve compliance with the Order, additional guidance may be issued to the responsible person in the form of an action plan.

## **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 Home Office Guidance
- Is supported by departmental and quality assurance procedures
- Demonstrably meet the principles of West Sussex Fire and Rescue Service'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

Dated: 10/12/20

Name: Richard Bradley

Job title: Group Manager Fire Safety

Review date: 10/12/22