

Regulatory Reform (Fire Safety) Order 2005

Guidance Note No.2 **Determinations by the Secretary of State**

March 2010

Introduction

1. The Regulatory Reform (Fire Safety) Order 2005 ("the Order") came into force on 1 October 2006. It applies to all non-domestic premises in England and Wales. The Order sets out the duties of the person responsible for premises (known in the Order as the "responsible person"). Other persons in control of premises are under duties parallel to those of a responsible person. References in this guide to a responsible person also includes such a person. The responsible person is required to carry out a suitable and sufficient fire risk assessment and then implement the necessary fire precautions and management procedures.
2. The Order is enforced by periodic inspections or audits by the enforcing authority (usually a Fire and Rescue Authority). If the enforcing authority considers that the responsible person has failed to comply with any provision of the Order they can advise on remedial measures or issue an enforcement notice specifying what measures they consider necessary.
3. Where both parties (the enforcing authority and the responsible person) agree that there is a need for improvements to fire precautions but disagree on the technical solution to be used, they may agree to refer the issue to the Secretary of State for independent determination under article 36 of the Order.

Example

An occupier has begun to use a new mezzanine floor in a warehouse. Both the enforcing authority and the responsible person agree that the distance to a place of safety is excessive. The enforcing authority feels that it is necessary to provide an alternative escape route from the mezzanine floor. The responsible person believes that a smoke detection system in the whole building will reduce the time for escape to an acceptable level with the existing escape route. Both agree to approach the Secretary of State to seek a determination under article 36 of the Order.

4. Consideration of a determination under article 36 of the Order should be at the earliest suitable opportunity and wherever possible before a formal enforcement notice has been issued. If an enforcing authority considers the breach is so serious that they have served an enforcement notice, a determination may not be appropriate.
5. Either party may refuse to agree to this procedure – for instance, if an enforcing authority considers that any delay brought about by the process would put people's safety at an unacceptable risk. In this case it is expected that enforcement action would be taken without a referral for a determination.
6. Determinations can only be made in respect of technical disagreements. The Secretary of State cannot determine the law itself.

Example

Following an inspection the enforcing authority has written to the owner of a premises warning that enforcement action will be taken unless a written record of a risk assessment is produced for inspection.

The owner of the premises does not consider that the Order requires him to produce such a document and agrees with the enforcing authority to seek determination from the Secretary of State. However the Secretary of State rejects the request as it relates to a determination of the law.

7. The Chief Fire and Rescue Adviser ('the CFRA') will provide independent professional advice to the Secretary of State in cases which have been referred for determination. In providing advice the CFRA may, where appropriate, seek technical support from a range of sources, other than from either of the parties seeking the determination.
8. Once the Secretary of State has made a determination, the enforcing authority may not take enforcement action that would be in conflict with his determination. Once the decision has been issued the Secretary of State has no further jurisdiction in the case and any matters that follow should be referred back to the enforcing authority.

Example

The Secretary of State has issued a determination in relation to the evacuation procedures in place in a low risk warehouse used for the storage of stone ornaments. The extended travel distances in the premises are considered acceptable as the fire risk in the premises is low due to various protective measures provided in the premises.

Following an inspection the enforcing authority finds that the premises is now being used for the storage of plastic toys stored in cardboard packaging using a high bay warehouse. The protective measures have not been revised for the increased hazard.

If the enforcing authority considers that the protective measures are now inadequate they may serve an enforcement notice requiring the procedures to be improved, without reference to the previous determination.

How to apply for a determination

9. An application for determination should contain **three** paper copies of the following documents:
 - names and addresses of the enforcing authority and the responsible person
 - full postal address of the premises in question
 - statement from **both** parties requesting the Secretary of State to determine the question
 - whether any formal enforcement action has been taken and, if so, full details of that action, with copies of any enforcement notice etc
 - the most recent risk assessment for the premises
 - statement setting out the provision of the Order at issue and the measures proposed by both parties to meet the provision
 - any relevant correspondence involved
 - any enforcement notice; and,
 - any other documentation, supporting the case for compliance, including any calculations, plans etc.
10. The package of documents should be sent to:

Fire Safety Policy Team
Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
11. If your request for a determination is considered valid you will receive a letter confirming receipt. If your request is not considered valid you will receive a letter setting out why it has been rejected.

Further information

12. You may be asked for more documents or information. This must be provided within the specified timescale or the Secretary of State may refuse to consider the case further.

The decision

13. The Department will aim to ensure you receive a decision within four months of all documents being submitted. A copy will be sent to both parties.
14. Once the decision has been issued, the Secretary of State has no further jurisdiction in the case. The Department will not enter into any correspondence with respect to a case or offer any further explanation of a decision. Any matters that follow should be referred back to the enforcing authority.