

ADVISORY LEAFLET

NOTES ON INSPECTION AND ENFORCEMENT PROCEDURES

This advisory leaflet has been provided to ensure that you are aware of the inspector's powers, and to explain any enforcement action the Bedfordshire Fire and Rescue Authority (the Authority) **may** take to rectify any deficiencies. A further leaflet (General Enforcement Policy) is available to you, which will explain what to expect when a fire inspector calls. The inspector will explain the reason for the inspection and what you will be required to provide during the inspection.

As the responsible person it is your duty to ensure the health and safety of your employees and others, such as members of the public, who could be affected by the way you run your business. The purpose of an inspection is to sample how you are complying with your legal responsibilities imposed by the Regulatory Reform (Fire Safety) Order 2005 (the Order).

Summary of Powers

An inspector appointed by Bedfordshire Fire and Rescue Authority and in possession of a written warrant, has powers under the following legislation:

- i) Regulatory Reform (Fire Safety) Order 2005
- ii) Health and Safety at Work etc. Act 1974 (HASWA). Sections 19, 20, 21, 23 and 25 of the Construction (Health, Safety and Welfare) Regulations made under HASWA.
- iii) Regulations made under the above Acts.

An inspector may do anything necessary for the purpose of carrying this Order into effect and in particular shall have the power to do, at any reasonable time, the following-

- a) to enter any premises and to inspect the whole or part of the premises and anything in them;
- b) to make such enquiry as may be necessary to ascertain whether the provisions of this order have been complied with and to identify the responsible person in relation to the premises;
- c) to require the production of any records, and to take copies of any entry in the records, which are required under any provision of the Order or for the purposes of examination under this article;
- d) to require any person to give such facilities and assistance to enable the inspector to exercise the powers conferred by this article;
- e) to take samples of any articles or substances found on the premises for the purposes of ascertaining their fire resistance or flammability; and
- f) in the case of any article or substance, to cause it to be dismantled or subjected to any process or test.

ENFORCING THE LAW

Where a breach of fire safety legislation is found, the inspector will decide what action to take. The action will depend on the nature of the breach and will be based on the principles set out in the Authority's General Enforcement Policy.

Inspectors may take enforcement action in several ways to deal with a breach of the legislation. In most cases these will be:

INFORMAL ACTION:

Notification Of Fire Safety Deficiencies Form

Where the Authority are of the opinion that you have failed to comply with any requirements imposed on you by the Order but the breach is considered not to warrant service of an Enforcement Notice the above notification will be served on you by the inspector. The notification will identify the matters to address, and the steps considered necessary to remedy them.

The Notification of Fire Safety Deficiencies document is **not** an Enforcement Notice. It identifies deficiencies which are required to be addressed to meet your legal obligations under the Order and is issued by the Authority **before** any formal enforcement action is taken.

As the responsible person you **may** be given a period of up to 28 days in which to make satisfactory progress towards achieving a remedy to the deficiencies.

Action Plans

An action plan may be either compiled by the responsible person supporting their fire risk assessment setting out the programme of work to achieve compliance; or issued by the Authority in support of any informal enforcement measures.

Where an action plan exists or is proposed, the relationship between the inspector and the responsible person must be viewed as a partnership. As part of this partnership both sides agree to accept the findings of the fire risk assessment and the projected time scale for completion/implementation of the measures identified in the action plan. These will need to be placed in order of priority for completion (and may include interim measures prior to long term or permanent measures being implemented).

On any future scheduled inspection if the work detailed in the risk assessment and action plan has not been completed in the agreed time scale, the inspector may either, depending on the situation and risk, re-negotiate and agree a revised time scale or, issue an enforcement notice.

FORMAL ACTION:

Alterations Notice

Where the Authority considers premises constitute a serious risk to persons, whether due to the features of the premises, their use, any hazard present or any other circumstances; it may serve on you, as the responsible person, an Alterations Notice.

Where an Alterations Notice has been served, you must before making:

- a change to the premises;
- a change to the services, fittings or equipment in or on the premises;
- an increase in the quantities of dangerous substances which are in or on the premises;
- a change to the use of the premises which may result in a significant increase in risk,

Notify the Authority of the proposed changes.

Enforcement Notice

Where the Authority are of the opinion that, as a person being under an obligation to do so, you have failed to comply with the requirements placed upon you by the Order you will be served with an Enforcement Notice.

Attached to the Notice will be a schedule specifying the matters that, in the opinion of the Authority, constitute failure(s) to comply with the Order.

The schedule will also identify the steps that must be taken to remedy the specified failure(s), to ensure that you comply with the Order.

Unless the steps identified in the schedule to the notice are taken by the specified date, it will be considered that you have not complied with the Notice and the Authority may consider a prosecution against you. You may however apply for an extension of time. [Notes on Enforcement Notice](#)

Prohibition Notice

Where the inspector considers that the use of the premises involves, or will involve, a risk to persons on the premises in the event of fire so serious that use of the premises ought to be prohibited or restricted, then the Authority may serve a Prohibition Notice. The notice may prohibit use immediately or after a specified time and not allow it to be used until remedial action has been taken. The notice will explain why the action is necessary. [Notes on Prohibition Notice](#)

Notice Under Article 37 (Firefighters' Switches For Luminous Tube Signs)

Where apparatus to which this article applies has been installed or an installation is proposed in or on the premises, the Authority may serve a Notice of requirements, relating to the position, colour and marking of the cut-off switch, on the responsible person.

Legal Enforcement

The Authority will consider prosecution where for example, there is failure to comply with the fire safety duties imposed by the Order and that failure has put one or more relevant persons at risk of death or serious injury in case of fire. In addition if there has been a failure to comply with any requirement or restriction imposed by a notice issued under the Order, then again consideration will be given to prosecution.

Penalties

Failure to comply with the fire safety duties imposed by this Order or with any requirement or restriction imposed by a notice issued under this Order is a criminal offence under Article 32 of the Order. A person guilty of such an offence shall be liable

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both.

Any person found guilty of an offence under any requirement imposed by Article 37 in respect of luminous tube signs is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Appeals

A person on whom an Alterations Notice, an Enforcement Notice, a Prohibition Notice or a Notice given by the Authority under Article 37 (firefighters' switches for luminous tube signs) is served may, within 21 days from which the Notice is served, appeal by way of complaint for an order to a magistrates' court. [Appeals Notice](#)

Public Register

You should be aware that in order to satisfy the "Environment and Safety Information Act 1988" the Authority is obliged to enter details of certain notices called "relevant notices" (which will be identified by the inspector serving the notice), into a register which the public have access to. "Relevant notices" are those which impose requirements or conditions not solely for the protection of persons at work. Entries on the register will be kept for a period of at least three years.

Entries to the register will be made within 14 days of the expiry of the right of appeal or the disposal of an appeal against the content of a notice. If a notice is cancelled on appeal no entry will be made. Where an inspector is satisfied that a notice has been complied with, withdrawn or amended a further entry will be made in the register within 7 days to show this.

If you think that the entry for this notice would disclose commercially sensitive information you should give written notice to the Authority **within 14 days**, they in turn will draft an entry which is considered not to disclose the information and serve this on you. In the meantime the entry will specify only your name, address, the place involved and the relevant legal provisions. If you are not satisfied with the redrafted entry you have a further right of appeal to the Secretary of State **within 14 days**.

Public Availability Of Information

Under the Code of Practice on Access to Government Information the Authority is committed to make available on written request, information about its actions and decisions, which includes information about notices it has issued. In general the information that the Authority will make available about a notice is the information on the front page.

Information on a notice will not be made available until the right of appeal against the content of a notice has expired with no appeal having been lodged, or the appeal has been disposed of. Where an inspector is satisfied that a notice has been complied with, this information will be made available at the same time as the information on the front page. If you think that the information in the notice would disclose commercially confidential information you should contact the Authority **within 14 days** who in turn will redraft the information in a way it believes will not reveal the confidential matter. In the meantime the only information to be made available will be your name, address, any place involved and the relevant legal provisions. If you are not satisfied with the redrafted information there is **no** further appeal. The Authority will however, make every effort to agree a form of words that is acceptable to you.

For the avoidance of doubt, where the publicising of a notice is appropriate to further the safety of persons, the details in the previous paragraph, about making available information regarding a notice will not apply. An example of circumstances where information may be given out directly the notice is served is where the notice prohibits the use of sleeping accommodation. Tenants, or other persons, who use this prohibited accommodation may be informed immediately by the Authority.

Complaints

If you are unhappy with the way the inspection has been conducted, or wish to make a complaint concerning any aspect of an inspection you should contact the service via the complaints procedure on the website www.bedsfire.com. Alternatively via e mail contacts@bedsfire.com or in writing to

THE CHIEF FIRE OFFICER
Bedfordshire Fire and Rescue Service
Southfields Road
Kempston
BEDFORD MK42 7NR

Regulatory Reform (Fire Safety) Order 2005

Notes / Appeals process in respect of a Enforcement Notice Served under Article 30

- 1 Application to premises. Regulatory Reform (Fire Safety) Order 2005 (the Order), subject to paragraphs 6 (1) (a) to (g) below, applies to any premises.
- 2 The Order does not apply in relation to:
 - (a) domestic premises;
Note: Where the premises are, or consist of, a house in multiple occupation this Order applies in relation to those parts of the premises which are not domestic premises;
 - (b) an offshore installation within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995;
 - (c) a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;
 - (d) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings;
 - (e) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act;
 - (f) a mine within the meaning of section 180 of the Mines and Quarries Act 1954, other than any building on the surface at a mine, and
 - (g) a borehole site to which the Borehole Sites and Regulations 1995 apply.
- 3 You may appeal (under Article 35 of the Order) against an Enforcement Notice served (under Article 30 of the Order). The appeal is made, within 21 days from the day on which the Notice is served, to the magistrates' court for the area in which your premises is situated and may be brought on the grounds that you think that:
 - (a) the service of an Enforcement Notice was based on an error of fact;
 - (b) the service of the Enforcement Notice was wrong in law, and
 - (c) the Authority erred in the exercise of their discretion in serving the Enforcement Notice.

Without prejudice to the breadth of the grounds of appeal set out in paragraphs (a) to (c) above, examples of situations in which an appeal may lie are where,

- (a) You dispute any of the facts in the Notice which detail the steps which have to be taken in order to comply with any provision of the Order.
- (b) You think that an unreasonable time period has been set for the taking of the steps set out in the Notice.

- 4 The Authority may grant, at their discretion, an extension (or further extension) of time specified for the steps to be taken if an appeal against the Notice is not pending. Application for an extension of time should be addressed to: The Chief Fire Officer, Bedfordshire Fire and Rescue Authority.
- 5 Failure to comply with the Enforcement Notice served under Article 30 of the Order within the time specified in the Notice (or such further time as the Fire Authority may, at their discretion, grant) is a criminal offence under Article 32(d) of the Order. A person guilty of such an offence shall be liable,
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.
- 6 In any proceedings for an offence referred to above, where the commission by any person of an offence under the Order, is due to the act or default of some other person, that person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.
- 7 Nothing in the Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee or person nominated to implement measures for fire-fighting and procedures for serious and imminent danger and for danger areas, and appointed to assist him/her in undertaking such preventive and protective measures as necessary.
- 8 Subject to Note 9, in any proceedings for an offence under the Order, except for a failure to comply with Articles 8 (1) (Duty to take general fire precautions) or 12 (Elimination or reduction of risks from dangerous substances), it is a defence for the person charged to prove that he/she took all reasonable precautions and exercised due diligence to avoid the commission of such an offence.
- 9 If you are the Responsible Person (See Standard Terms and Definitions) you are under an obligation to comply with the provisions of the Order or of any regulations made under it. If you have failed to comply and you and the Authority cannot agree on the measures which are necessary to remedy the failure(s), under Article 36 of the Order you and the Authority may agree to refer the question, as to what measures are necessary to remedy the failure(s), to the Secretary of State for a determination.
- 10 It should be noted that in order to satisfy the 'Environment and Safety Information Act 1988' the Authority is obliged to enter details of any Enforcement Notice into a register to which the public have access. If you feel that any such entry would disclose secret or confidential trade or manufacturing information then you should appeal in writing to the Authority within a period of fourteen days following the service of the Notice.
- 11 To assist with administration procedures, it would be helpful if you could quote the reference number (at the top of this Notice) when dealing with the Authority.

Regulatory Reform (Fire Safety) Order 2005

Appeals process in respect of a Prohibition Notice Serviced under Article 31

- 1 Under Article 32(2) (h) of this Order it is an offence for any person to fail to comply with any prohibition or restriction imposed by a Prohibition Notice and renders the offender liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.
- 2 In any proceedings for an offence referred to in Note 1. Where the commission by any person of an offence under the Order, is due to the act or default of some other person that person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.
- 3 Nothing in the Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee or person nominated to implement measures for fire-fighting and procedures for serious and imminent danger and for danger areas, and appointed to assist him/her in undertaking such preventive and protective measures as necessary.
- 4 Subject to Note 3, in any proceedings for an offence under the Order, except for a failure to comply with Articles 8(a) (Duty to take general fire precautions) or 12 (Elimination or reduction of risks from dangerous substances), it is a defence for the person charged to prove that he/she took all reasonable precautions and exercised due diligence to avoid the commission of such an offence.
- 5 In any proceedings for an offence under the Order consisting of a failure to comply with a duty or requirement so far as is practicable or so far as is reasonably practicable, it is for the accused to prove that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement.
- 6 A person on whom a Prohibition Notice is served may appeal under Article 35 of the said Order to the Magistrates' Court, for the area in which the premises is situated, within 21 days from the date on which the Prohibition Notice is served. The bringing of an Appeal does not have the effect of suspending this Notice, unless on the application of the appellant, the Court so directs (and then only from the giving of the direction).
- 7 It should be noted that in order to satisfy the "Environment and Safety Information Act 1988" the Fire Authority is obliged to enter details of any Prohibition Notice into a register to which the public have access. If you feel that any such entry would disclose secret or confidential trade or manufacturing information then you should appeal in writing to the Bedfordshire Fire and Rescue Authority (the Authority) within a period of fourteen days following the service of the Notice.
- 8 The works or actions specified in the Notice are only intended to reduce the excessive risk to a more acceptable level. The Notice is issued without prejudice to any other enforcement action that may be taken by this or any other enforcement authority. Further works or measures may be required to achieve compliance with the Regulatory Reform (Fire Safety) Order 2005. Where necessary these will be detailed in a separate Enforcement Notice.
- 9 The Authority would be willing to consider and assist with any proposals you may have to remedy the matters specified in the Notice.