



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

Nottinghamshire and City of Nottingham  
Fire and Rescue Authority  
Community Safety Committee

# **REGULATORY REFORM (FIRE SAFETY) ORDER 2005 – ENFORCEMENT**

Report of the Chief Fire Officer

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**Agenda Item No:**

**Date:** 08 April 2011

**Purpose of Report:**

To inform Members on the procedures in place by which the Service enforces the provisions of the Regulatory Reform (Fire Safety) Order 2005.

## **CONTACT OFFICER**

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## **1. BACKGROUND**

- 1.1 The Regulatory Reform (Fire Safety) Order 2005 (FSO) came into effect in October 2006 and replaced over 70 pieces of fire safety law. The requirements for enforcement in the FSO were not new to Fire and Rescue Authorities as there were close similarities with the Fire Precautions (Workplace) Regulations 1997. However, the FSO covers a far larger range of premises including:
- Non domestic premises including common parts of houses in multiple occupation;
  - Premises used by self employed (including family run businesses);
  - Premises used by the voluntary sector.
- 1.2 Exceptions include Crown occupied/owner properties, premises in armed forces establishments, certain specified premises including construction sites, ships under repair and construction and nuclear installations; and sports grounds and stands designated as needing a safety certificate by a local authority.
- 1.3 Article 26 of the FSO requires that every enforcing authority must enforce the provisions of the Order and any regulations made under it. The Chief Fire Officer has delegated responsibility to ensure that the Service fulfils any requirement made on the Fire Authority.

## **2. REPORT**

- 2.1 The primary function of the Service's enforcement work is to protect the public, the environment and groups such as consumers and workers, while at the same time, carrying out enforcement functions in an equitable, practical and consistent manner.
- 2.2 The effectiveness of the FSO in protecting society depends crucially on the compliance of those regulated. The Service's approach recognises that most businesses want to comply with the law and therefore, takes care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly.
- 2.3 The Service has adopted the central and local government Concordat on Good Enforcement and commits to the following principles which will contribute to best value, and will provide information to show that the Service is observing them.

2.4 Detailed below are the Principles of Good Enforcement that the Service follows:

### **Policy Standards**

2.5 In consultation with business and other relevant interested parties, including technical experts where appropriate, the Service will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. The Service will publish these standards and the annual performance against them. The standards will be made available to businesses and others who are regulated.

### **Openness**

2.6 The Service will provide information and advice in plain language on the rules that it applies and will disseminate this as widely as possible. The Service will be open about how it sets about our work, including any charges that are set, consulting business, voluntary organisations, charities, consumers and workforce representatives. The Service will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

### **Helpfulness**

2.7 The primary position of the Service is that prevention is better than cure and that its role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. The Service will provide a courteous and efficient service and our staff will identify themselves by name. The Service will provide a contact point and telephone number for further dealings with us and will encourage business to seek advice/information.

2.8 Applications for approval of establishments, licenses and registrations will be dealt with efficiently and promptly and wherever practicable the Service will ensure that enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

### **Complaints**

2.9 The Service has a well-publicised, effective and timely complaints procedure easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

### **Proportionality**

2.10 The Service will minimise the costs of compliance for business by ensuring that any action required is proportionate to the risks. As far as the law allows the Service will take account of the circumstances of the case and the attitude of the operator when considering action.

- 2.11 The Service will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

### **Consistency**

- 2.12 The Service will undertake its duties in a fair, equitable and consistent manner, its inspectors are expected to exercise judgement in individual cases and the Service will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

### **Procedures**

- 2.13 Advice from officers will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale and making sure those legal requirements are clearly distinguished from best practice advice.
- 2.14 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve the matter, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).
- 2.15 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.
- 2.16 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

### **Powers of Enforcement**

- 2.17 The FSO provides a number of powers available to an inspector for carrying out the Order, this includes the power to enter premises, make enquires, require production of information and records, take copies of any records and to require the person having responsibility for the premises to provide facilities and assistance to enable the inspector to exercise their powers. All inspectors must be warranted and on request produce the warrant card as evidence of their authority.
- 2.18 Fire Protection inspectors are empowered to serve a number of notices on the responsible person for premises to ensure the safety of the public. These include Alteration Notices which in effect formalise the interface between the Service and the person having the duty to ensure the safety of the building. Alteration Notices can only be served if in the opinion of the inspector the

premises constitute either a serious risk or may constitute a serious risk if a change is made.

- 2.19 Enforcement Notices provide a means to enforce improvement where the Service is of an opinion that a responsible person has failed to comply with any provision in the FSO. While Prohibition Notices are served where the Service is of an opinion that the use of the property involves or will involve risk to relevant persons that is so serious that the use of the premises ought to be prohibited. Finally where there is potential for imminent danger all Inspectors have a responsibility to ensure that the risk is appropriately mitigated immediately.
- 2.20 Over the past 3-years the Service has issued the following Notices:
- Enforcement – 21 Notices in 2009 – 10 Notices in 2010 and 3 Notices in 2011
  - Prohibition – 3 Notices in 2009 – 6 Notices in 2010 and 1 Notice in 2011.
- 2.21 FSO part 4 details the offences and appeals, before the Service embarks on this route there is a robust protocol that involves collection of evidence, case conferences, submission of cases files to the Service's solicitors Browne Jacobson for advice. Finally the case is presented to the Chief Fire Officer who decides if the Authority should seek a prosecution.
- 2.22 Detailed below are two examples where successful prosecutions have been brought for serious breaches of the FSO.
- 2.23 Following a complaint, officers from the Service visited the premises and served a prohibition notice. A landlord/hotel proprietor received a nine month's suspended sentence, 180 hours of community service and £2,000 fine for breaches of fire safety legislation. This was due to a lack of a fire alarm and other basic fire safety, which presented a serious risk to guests. He was further instructed not to use the upper floors as sleeping accommodation until remedial work had been done. He was subsequently prosecuted when he ignored this notice exposing guests to serious risk. In his sentencing remarks, His Honour Judge Stokes observed that this was the first breach of a prohibition notice to become before Nottingham Crown Court under the Fire Safety Order 2005. He said that ignoring the notice had put a number of lives at risk and it was only because of personal mitigation and an early guilty plea that stopped the landlord being immediately sent to prison. He continued by saying that this offence had to be marked with a prison sentence so that it would send the word out to future defendants, but that the prison sentence would not necessarily be suspended.
- 2.24 A businessman was sentenced to six months in prison suspended for two years and ordered 100 hours of community service following breaches of fire safety legislation at his premises. He was also fined a total of £24,000 (on appeal reduced to £12,000) and had to pay £9,000 costs. Officers had inspected the three storey building and made recommendations which needed completion before the building could be used as an indoor car boot

market. Following a complaint the officers visited again and found that the premises were being used but the works had not been completed. A statutory notice was then served to prevent the premises being used until the work was finalised. He was eventually prosecuted when it became apparent that he had ignored the original advice and continued to trade without ensuring his premises were safe.

- 2.25 Enforcement of the FSO is a critical element of the Service's Community Safety Plan and the Authority's strategy for the enforcement of fire safety forms a key part of its overall strategy for the protection of communities.

### **3. FINANCIAL IMPLICATIONS**

Expenditure on legal advice varies from year to year. The Service spent £24k in 2009/10 and approximately £14k in the first 11 months of 2010/11. This expenditure is met from the centralised legal expenses budget. Following a successful prosecution the Service may receive income relating to the recovery of costs. Again, the amount of income varies. £6,377 was received in 2009/10, and £1,580 has been received during the first 11 months of 2010/11.

### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

It is important that the Service ensures that all staff required to carry out enforcement work have received the appropriate training and have access to current legislative information on a timely basis.

### **5. EQUALITY IMPACT ASSESSMENT**

The Authority has a statutory duty to enforce the provisions laid out in this act, however all staff undertaking this work have received appropriate training. The Concordat on Good Enforcement which the Service is fully signed up to is designed to ensure equality in the application of the statutory duties.

### **6. CRIME AND DISORDER IMPLICATIONS**

There are no direct crime and disorder implications arising from this report.

### **7. LEGAL IMPLICATIONS**

- 7.1 The Authority has a duty to enforce the provisions of the FSO Article 26 and any regulations made under it in relation to premises for which the Authority is the enforcing authority. The Authority must have regard to such guidance as the Secretary of State may give it.

- 7.2 For the purposes of carrying out its duties the Authority may appoint inspectors and issue them with the appropriate Warrant. The Chief Fire Officer has delegated powers that ensure the Authority meets its duties.

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1 The approach the Service takes ensures that the Fire Authority complies with its statutory duties in respect of enforcement and therefore reduces the risk that the Authority is not compliant with its legal obligations.
- 8.2 However, the Service is heavily reliant on complaints from the public to identify premises that pose a risk and continues to strive to build sufficient knowledge of the extent of the risk within communities so the Service can be assured that its actions are proportionate.

## **9. RECOMMENDATIONS**

That Members note this report and continue to support fire safety and enforcement activities.

## **10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

Frank Swann  
**CHIEF FIRE OFFICER**