

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 East Sussex Fire Authority (the Authority) may take to rectify any deficiencies.

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/operate your premises. 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 the Authority and in possession of written authorisation, 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.
- iii) Regulations made under the above legislation.

An Inspector may do anything necessary for the purpose of carrying this Order into effect and, without prejudice to the generality of these powers, 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;
- d) to require any person to give such facilities and assistance to enable the Inspector to exercise the powers conferred by the Order;
- 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 determined by the Authority's Enforcement Policy.

Inspectors may take enforcement action in several ways to deal with a breach of the legislation. This includes the following:

INFORMAL ACTION

Record of Inspection Form - Notification of Fire Safety Deficiencies

Where the Authority is of the opinion that you have failed to comply with any requirements imposed on you by the Order but the breach does not immediately result in the 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 Record of Inspection Form 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 reasonable period of time in which to remedy the deficiencies.

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; or premises may constitute such a risk if a change is made to them, or the use to which they are put, 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 Notices

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 and that an Enforcement Notice is appropriate in the circumstances 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, the grant of which is at the discretion of the Fire Authority.

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 or restrict 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.

Notice Under Article 37 (Fire-Fighters' 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.

Where there are sufficient grounds for a prosecution, the Authority may instead choose to issue a Formal Caution. This will be subject to the agreement of the person concerned and their admission of the alleged offence. A Formal Caution will be kept on record and may influence a decision to prosecute should there be infringements of the law in the future.

In cases where the Authority decides that no legal action will be taken for infringements of the law, they may choose to issue an Informal Caution. This will inform the person concerned of the fact and that the details will be recorded and taken into account, in the event of any similar occurrence in the future.

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 (fire-fighters' 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.

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. However, the Authority will make every reasonable 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

A complaint is a representation from a member of the public or an organisation that the Service has either failed to do something, done something wrong or acted unfairly or discourteously. 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 either write to the Service Complaints Officer at:

East Sussex Fire & Rescue Service HQ
Church Lane
Lewes
East Sussex
BN7 2DZ

or ask to speak to the Service Complaints Officer on: **0303 999 1000**

A booklet: 'How to Complain', is available from our Service web site at:

www.esfrs.org/contact_us/index.htm