



# *Regulatory Reform (Fire Safety) Order 2005*

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Guidance Note No. 1: Enforcement





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Department for Communities and Local Government  
Eland House  
Bressenden Place  
London SW1E 5DU  
Telephone: 020 7944 4400  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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# Overview

With the introduction of the Regulatory Reform (Fire Safety) Order 2005 (“the Order”) in October 2006, Fire and Rescue Authorities and other bodies (“enforcing authorities”) now have a duty to enforce fire safety in non-domestic premises.<sup>1</sup>

Most of the requirements of the Order will not be new to Fire and Rescue Authorities. Many are similar to those of the Fire Precautions (Workplace) Regulations 1997 (as amended), but are applicable to a far larger range of premises eg all non domestic premises including common parts of houses in multiple occupation (HMOs) and those premises used by the self employed (including family run businesses) and the voluntary sector. Provision is made for the protection of a wider range of persons under the Order than the 1997 Regulations.

Experience has shown that enforcement activity and uniformity of approach varies across Fire and Rescue Authorities and that guidance on the intent of the Order may help increase consistency. This is the first guidance note in a series intended to assist Fire and Rescue Authorities as enforcing authorities in better understanding their duties under the Order and for the public to better understand the intent of specific aspects of the Order.

This guidance is issued by Government and has been seen in draft by the following stakeholders:

- Chief Fire Officers Association
- Fire Brigades Union
- The Association of Building Engineers
- Department for Culture, Media and Sport
- Business and Community Safety Forum
- Health and Safety Executive
- Local Authorities Co-ordinators of Regulatory Services

This document may be updated from time to time and any changes will be notified through a new guidance note in this series.

<sup>1</sup> Fire and Rescue Authorities are the main enforcing authorities for this Order, however there a small number of exceptions, as set out in article 25 of the Order and those enforcing authorities should note this guidance for their particular areas of enforcement.

# Introduction

1. This guidance is issued by the Secretary of State to assist enforcing authorities in their enforcement responsibilities under the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541). By virtue of the Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006 (SI 2006/484), the Order came into force on 1 October 2006. This guidance does not apply to Wales.
2. All enforcing authorities will wish to note article 26(2) of the Order, which requires enforcing authorities to have regard to guidance given by the Secretary of State about enforcement of the Order.

## Purpose

3. The purpose of this guidance document is to provide enforcing authorities with advice about enforcement of the duties contained within the Order. It should be consulted together with the Order itself, not instead of it. The guidance is founded upon current knowledge and legal advice. It must however be accepted that any definitive interpretation of the Order will be made by the courts.
4. A key pillar of the Order is that it is for the responsible person to demonstrate that they have complied with the duties placed upon them under the Order.

## Contents

5. This guidance provides consideration of the requirements imposed on the “responsible person” and covers arrangements for enforcement of the Order.

# General

## Application

6. The Order applies to England and Wales. The powers and functions of the Secretary of State under the Order have been transferred to the National Assembly for Wales in respect of Wales.

## ***Guidance issued under previous legislation – now revoked***

7. Except as provided below, all Fire Precautions Act 1971 (FPA) Circulars issued are now withdrawn. However, FPA Circulars 16, 18 and 26 remain in force, as they relate to the Fire Precautions (Sub-Surface) Railway Stations Regulations 1989. Further guidance on this matter is contained below.
8. FPA Circular 29 should be retained in its other guise as IRMP Guidance note number 4 (which may be updated from time to time), as it deals with matters relevant to this guidance note.
9. A number of other central guidance documents are also being withdrawn for England and Wales:
  - Fire safety: an employer's guide
  - Guide to fire precautions in existing places of work that require a Fire Certificate
  - Guide to fire precautions in offices and shops requiring a Fire Certificate
  - Guide to fire precautions in existing places of entertainment and like premises and,
  - Guide to fire precautions in premises used as hotels and boarding houses which require a Fire Certificate.

## ***Other new guidance***

10. Details of the suite of technical risk assessment guidance documents are given as part of the information about article 50. These guides are targeted at the end user but enforcing authorities are expected to have due regard to them.
11. Details of the guides and entry level guidance prepared in conjunction with the Chief Fire Officers Association (CFOA) can be found on the Communities and Local Government website<sup>2</sup>. Further guidance for small businesses, prepared by the Department, is also available on the Small Business Service website.<sup>3</sup>

<sup>2</sup> See: [www.communities.gov.uk/fire](http://www.communities.gov.uk/fire)

<sup>3</sup> See: [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

### ***Enforcement expectations***

12. For Fire and Rescue Authorities there is a requirement in the current National Framework<sup>4</sup> to have an effective enforcement programme in place and for this to form part of the overall Integrated Risk Management Plan (IRMP). This guidance should be used by Fire and Rescue Authorities to assist in the continued development of IRMP. Other enforcing authorities are also expected to have in place appropriate arrangements for the effective enforcement of the order.
13. Fire and Rescue Authorities will also wish to bear in mind IRMP Guidance Note Number 4 (which may be updated from time to time), which gives guidance on Risk Based Inspection Programmes and their development. IRMP Guidance Note Number 4 should be used in conjunction with this guidance when preparing an inspection programme. The IRMP guidance was prepared in the full knowledge of the reform and is designed to work with it.
14. All enforcing authorities are expected to enforce the Order in accordance with the principles of the “*Enforcement Concordat*” issued by the Department for Business, Enterprise and Regulatory Reform.<sup>5</sup>
15. Communities and Local Government will be monitoring the enforcement of the Order, and the Order’s judicial interpretation. It will be helpful therefore for enforcing authorities to notify Communities and Local Government of any significant prosecutions where the judicial decision further clarifies an area of the law, particularly in the early part of the Order’s life.

### ***Enforcement of existing notices and continuance of legal proceedings***

16. Notwithstanding the repeal of the Fire Precautions Act 1971 and the consequent revocation of the Fire Precautions (Workplace) Regulations 1997, enforcement and prohibition notices served under these enactments prior to 1 October 2006 continue in force and enforcement in respect of them may continue. In addition any investigation or legal proceedings in respect of offences committed (under that legislation) before 1 October 2006 may be instituted, continued or enforced.

### ***Enforcement and the use of Police and Criminal Evidence Act 1984 (PACE)***

17. Under section 67(9) of PACE, persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of the codes of practice published under PACE. This includes enforcing authorities who are conducting investigations with a view to prosecution of offences under the Order. Enforcing authorities are therefore cautioned that they ought to have in place provisions that enable them to satisfy the requirements of PACE where there is the possibility of criminal action being initiated after exercising their powers when enforcing the Order. Codes B, C and E are of particular relevance. Up to date guidelines on using PACE are currently being prepared by the Home Office.<sup>6</sup>

<sup>4</sup> The next National Framework document will be published in Spring 2008.

<sup>5</sup> [bre.berr.gov.uk/regulation/documents/pst/pdf/concord.pdf](http://bre.berr.gov.uk/regulation/documents/pst/pdf/concord.pdf)

<sup>6</sup> [police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/](http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/)

## **Enforcement management**

18. The Health and Safety Executive (HSE) has published an Enforcement Management Model (EMM). This is “a framework which helps inspectors make enforcement decisions in line with the HSE’s Enforcement Policy Statement (EPS). The EPS sets out the principles inspectors should apply when determining what enforcement action to take in response to breaches of health and safety legislation. Fundamental to this is the principle that enforcement action should be proportional to the health and safety risks and the seriousness of the breach.” (EMM summary statement). Whilst this focuses on health and safety legislation and not the Order, many of the principles are similar and enforcing authorities are encouraged to have regard to the EMM. Separately, CFOA has prepared an Enforcement Management Model and extensive procedural guidance, including audit and inspection procedures, to assist Fire and Rescue Authorities in their work under the Order.<sup>7</sup> The model is based on that used by the HSE. Other enforcing authorities may wish to have regard to the model and guidance. It will be for individual authorities to determine whether or not to adopt the model and guidance.

## **Housing**

19. The Order does not apply (except in relation to article 31) to private dwellings. However, residential premises eg blocks of flats and HMOs are covered by the Order to the extent that they comprise common parts and systems (eg stairs, corridors, shared kitchens, bathrooms and lounges etc) which are used by the occupants of more than one dwelling. This is a complex area which will be addressed in more detail in separate guidance.
20. Enforcing authorities are encouraged to adopt the *Protocol between Local Housing Authorities and Fire and Rescue Authorities to improve fire safety*. This was published by CFOA and the Chartered Institute of Environmental Health early in 2007.

## **Fire Precautions (Sub-Surface Railway Stations) Regulations 1989 (SI 1989/1401)**

21. These Regulations (with the exception of regulation 13(3) and (4)) have been saved despite the repeal of their enabling Act (the Fire Precautions Act 1971) and will operate in parallel with the Order. Enforcing authorities are requested to exercise their enforcement functions using the framework provided by the Order, for example considering requests under regulation 12 for exemptions from the requirements of the 1989 Regulations by reference to the operator’s risk assessment, and to advise Communities and Local Government of any instances where it becomes necessary to fall back on the 1989 Regulations to achieve or maintain necessary levels of safety.
22. The Government will be consulting on changing the 1989 Regulations during 2007/8.

<sup>7</sup> [www.hse.gov.uk/enforce/emm.pdf](http://www.hse.gov.uk/enforce/emm.pdf) – the CFOA EMM is available in a members only area of the CFOA website.

## Part 1 General

23. This section sets out what each article means in plain English. It provides explanation and background to help enforcing authorities understand the intent behind each article.

### Article 1 – Citation, commencement and extent

24. This provides for the name of the Order, its commencement and its application. As previously noted the coming into force date for the Order has been amended to 1 October 2006. The Order applies to England and Wales only (see Application above).

### Article 2 – Interpretation

25. This Article provides definitions of the various terms used throughout the Order, many of which are existing definitions in fire safety legislation. The meaning of “responsible person” and “General fire precautions” are provided by articles 3 and 4 respectively.
26. Only the courts can provide definitive interpretations but enforcing authorities may find the following views about phrases not defined in the Order helpful.

#### ***“Where necessary”***

27. The European Workplace Directive (89/654/EEC), in the preliminary note (paragraph 1) to the Annex, states that:

*“the obligations laid down in this Annex apply whenever required by the features of the workplace, the activity, the circumstances or a hazard.”*

28. This is implemented in the Order by use of the term “where necessary”, and that expression should be construed accordingly.
29. The Order requires that fire precautions (such as fire fighting equipment, fire detection and warning, conditions relating to emergency routes and exits) should be provided (and maintained) “where necessary”.
30. This means that the fire precautions provided (and maintained) by the responsible person are those needed to reasonably protect relevant persons from risks to them in case of fire. This is determined by the findings of a fire risk assessment, including the preventative measures which have or will be taken. In practice, it is very unlikely that a properly conducted fire risk assessment, which takes into account all the matters relevant for the safety of persons in case of fire, will conclude that no fire precautions (including maintenance) are necessary.

**“Suitable and sufficient”**

31. Article 9 of the Order requires the responsible person to carry out a “suitable and sufficient” assessment of the risks on the premises. What form the assessment takes will be dependent on the type and size of premises or undertaking concerned. What is suitable and sufficient for one premises will not be sufficient for another. It will be for enforcing authorities to determine whether they consider that the risk assessment is suitable and sufficient, taking into account such factors as the nature of the building and the type of undertaking. In each case the determining factor is likely to be whether fire hazards have been reasonably identified, risk reduction and mitigation carried out and residual risk appropriate protection measures (including management arrangements) implemented or proposed.
32. Enforcing authorities should note that the requirement for suitability and sufficiency is one and the same requirement as that in health and safety law. Detailed advice has been produced by the Health and Safety Commission as part of the *Approved Code of Practice and Guidance* to accompany the *Management of Health and Safety at Work Regulations 1999* (ISBN 0-7176-2488-9). That guidance is equally applicable to the suitability and sufficiency of risk assessments under the Order.

**Article 3 – Meaning of “responsible person”**

33. Article 3 defines who is the responsible person for the premises. In order to meet the obligations under EC Directives, wherever there is an employer they will continue to be responsible for the safety of their employees. In order to achieve the necessary broader coverage of the legislation beyond workplaces, the definition has been extended. Therefore, where there is no employer in any premises, the occupier or owner of the premises is the responsible person.
34. The responsible person will be responsible not only for the safety of employees, but for that of any person (a “relevant person”, as defined in article 2) lawfully on the premises, or in the immediate vicinity of the premises and at risk from a fire on the premises.
35. Article 3(a) provides that in a workplace the employer is the responsible person if the workplace is under the employer’s control. This reflects the Framework Directive (89/391/EEC), which imposes unconditional obligations on employers by having the ultimate responsibility for the safety of their employees in case of fire, even where others have obligations in respect of the premises.
36. If the premises are not a workplace, or are a workplace but are not under the employer’s control, the responsible person is determined by whether the person who has control over the premises does so in connection with the carrying on of a trade, business or undertaking (whether or not for profit).
37. If so, article 3(b)(i) provides that the person with control is the responsible person.

38. If not, article 3(b)(ii) provides that the owner is the responsible person. Article 5(3) extends the responsible person's duties to include any other person to the extent that they have control of the premises. Under Article 5(4) any person who by virtue of any contract or tenancy has obligations of any extent in respect of maintenance of the premises (and anything in them) or the safety of the premises is to be treated to that extent as a person who has control for the purposes of Article 5(3). Enforcing authorities should note that due to the reference to the term "any contract" is not intended to be limited to those in respect of the occupation of property, eg a lease or licence to occupy, but would include, for example, a contract for the installation and/or maintenance of a fire alarm system or a fire sprinkler system.
39. In many cases there will be more than one person subject to the obligations of a responsible person for premises. The level of responsibility will vary according to the employment position (total responsibility for an employer) and the degree to which the person can exercise control over safety in the premises. This is a deliberate aspect of the Order to allow enforcement action to be taken against the person who is culpable and/or in a position to remedy contraventions.
40. In cases where there is more than one responsible person or more than one person with duties under the Order, it is expected that the enforcing authority will use its discretion in deciding what enforcement action to take and against whom that action should be taken. Enforcement action may be taken against one or more responsible persons. For example, if an employer has no control over the area or matter in question and a fire precaution is not being properly maintained by a landlord it may be more appropriate to address enforcement measures to the landlord who does have control. However, action may be appropriate against more than one person.
41. Enforcing authorities will wish to consider the degree of culpability and the appropriateness as to the person (or persons) against whom any necessary action should be taken. For example, where an owner's acts or omissions jeopardise the safety of employees, such as an obstruction to the means of escape, the employer, as a responsible person, must call upon the owner, who has similar obligations to co-operate and co-ordinate to do what is necessary in line with their responsibilities as responsible persons. Even so, despite the absolute duty of the employer, where that employer has acted reasonably and can demonstrate that fact and where the fault lies with the owner it would be reasonable to consider taking action against the owner alone.

#### **Article 4 – Meaning of "general fire precautions"**

42. Article 4 sets out the main general fire precautions requirements with respect to fire-fighting and fire detection, emergency routes and exits, and their maintenance, including measures to mitigate the effects of fire. However, those safety measures provided in a workplace in order to prevent or reduce the likelihood of fire arising directly from a work process (including the storage and use of dangerous substances, goods or materials) or to reduce its intensity, will remain within the remit of Health and Safety legislation. The principles of reduction of risk remain and the overarching objective of the Order is to ensure that relevant persons are safe from fire and enforcing authorities must act towards this objective.

43. The purpose of article 4 is to create a clear demarcation between general fire precautions and other special precautions related to work processes.
44. Nonetheless some areas of doubt will inevitably arise. Enforcing authorities are advised to seek local agreement with general health and safety enforcing authorities according to the circumstances of individual cases and where necessary advise Communities and Local Government of areas of doubt or cases where agreement cannot be reached. An agreement has been put in place between the HSE and CFOA with regard to this and wider issues eg special premises etc which has been issued by the HSE.

### **Article 5 – Duties under this Order**

45. This article sets out the duty imposed on the responsible person (and others) to ensure that the requirements of the Order and any Regulations made under it are complied with in the premises. Article 5 implements the European Workplace Directive giving employers the unconditional duty for ensuring the safety of their employees. The article imposes similar duties on persons other than the responsible person (see article 3).

### **Article 6 – Application to premises**

46. Article 6 provides that, subject to certain exceptions clearly listed in the legislation, the Order will apply to all premises. Particular attention is drawn to the definition of “domestic premises” where article 31 is the provision relating to prohibition notices: it is the sole exception to the rule that the Order does not apply to domestic premises used for domestic purposes.
47. Article 6 disapplies the Order in relation to certain means of transport. In respect of those means not disapplied under that article, article 7(2) disapplies articles 9(2), 12, 16, 19(3) and 22(2) in relation to the use of means of transport for dangerous substances, which are covered by international and European Directives legislation, except for any means of transport which is intended for use in a potentially explosive atmosphere. In practice, this means only vehicles not used on the public highway are likely to fall within the scope of the Order (e.g. forklift trucks or “cherry-pickers” used in a warehouse).

### **Article 7 – Disapplication of certain provisions**

48. The requirements of articles 9(4) and (5) and 19(2), relating to risk assessments and the provision of information about such assessments, do not apply to young persons employed in a family undertaking who work occasionally or carry out short-term work regarded as not being harmful, damaging, or dangerous. It is considered overly burdensome to impose detailed requirements on family undertakings to carry out detailed risk assessments in relation to young persons where there is no likelihood of harm or damage.
49. Where the responsible person is not an employer, ie he or she is simply an owner or occupier of premises, then the duties under article 19, to provide information to employees, and under article 21, in relation to the provision of safety training for employees, do not apply.

50. Fire safety duties under this Order do not apply to the extent that they prevent any member of the emergency services, HM and visiting armed forces, or the police force from carrying out their duties. This does not mean that there is a blanket exemption in respect of the armed forces and emergency services.
51. The requirement in article 14(1)(f) not to lock emergency doors in such a way that they cannot be readily opened in the event of an emergency does not apply to a prison, remand centre, detention centre or youth custody centre or any other premises used for keeping persons in lawful custody or detention.
52. But the last two disapplications are overridden by a requirement that the safety of relevant persons, including those in custody, should be safeguarded as far as is possible.

## Part 2 Fire Safety Duties

### Article 8 – Duty to take general fire precautions

53. This article imposes on the responsible person the duty to implement the preventive and protective measures which have been evaluated in the risk assessment. This article reflects the principles of the European Framework and Workplace Directives – to assess the likelihood of fire and its consequences for those in the workplace and to take appropriate measures to reduce or eliminate such risks.
54. By virtue of this article, the responsible person is under a duty to ensure that general fire precautions are in place to ensure the safety of any of his employees, or of any relevant persons who are not his employees.
55. The duty imposed is very similar to that imposed by the general duties of the Health and Safety at Work Act 1974. Employers, self employed persons and other responsible persons must ensure, so far as is reasonably practicable, that general fire precautions are in place for the safety of any of their employees and other relevant persons.<sup>8</sup>

### Article 9 – Risk Assessment

56. The responsible person must make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the measures they need to take to comply with the requirements and prohibitions imposed on them by the Order. The nature of the assessment will vary according to the type and use of the premises, the persons who use or may use the premises, and the risks associated with that use. A risk assessment should be reviewed regularly by the responsible person to keep it up to date, valid and to reflect any significant changes that may have taken place.
57. The Order contains a requirement to record the “prescribed information” if five or more persons are employed in order to maintain consistency with health and safety legislation. The prescribed information comprises the significant findings of the risk assessment (including the measures taken or to be taken, eg training and maintenance, consultation and co-ordination) and any group of persons identified as being especially at risk. Under the Order, the threshold of five or more persons includes those employees who may work from or in another place away from the premises concerned, for example an employer with three shops, each of which has two staff would employ six people and thus be under a duty to record the risk assessment for each shop.
58. The responsible person must also keep a record if the premises are subject to any statutory licence, or if required by an alterations notice under the Order in relation to the premises.

<sup>8</sup> Further guidance is available at [www.hse.gov.uk/theory/alarp.htm](http://www.hse.gov.uk/theory/alarp.htm)

59. Where a dangerous substance, as defined in article 2 of the Order, is present in or on the premises the risk assessment must include consideration of all the matters listed in Part 1 of Schedule 1. These include the amount of the substance and its hazardous properties and the circumstances of the work including the work processes, use and storage.
60. The responsible person must not employ a young person unless they have made or reviewed a risk assessment, which must have particular regard to the risks to young persons. The responsible person must take particular account of the matters listed in Part 2 of Schedule 1 to the Order. It should be noted that the Order uses two terms “child” being a person who has not yet attained compulsory school leaving age (16 or the end of the school year in which they will become 16) and “young person” being a person (including a child) under the age of 18.
61. For the avoidance of doubt, it is accepted that other persons may record the prescribed information at the request of, and on behalf of, the responsible person. In such cases this may be accepted as being recorded by the responsible person. If a responsible person relies on a risk assessment carried out on their behalf by a person who is competent to carry out such a risk assessment, it may be a strong mitigating factor if the responsible person is prosecuted for an offence under article 32, although it will not relieve the responsible person from criminal liability. For the avoidance of doubt, enforcement action is taken against the responsible person, not the contractor. A contractor may well be liable to the responsible person in contract or tort for a negligently carried out risk assessment, but that is outside of the scope of this guidance.
62. The suitability of a risk assessment and its recording is partly reliant on its ease of understanding. In some buildings, particularly in complex buildings, the risk assessment may need to incorporate plans showing the general fire precautions arrangements – this may be where it is not possible to identify matters clearly in the narrative of the risk assessment. There is nothing in the Order which would directly compel a responsible person to create new plans. However, for some complex buildings a risk assessment will not be suitable and sufficient or properly recorded without additional plans. Similar considerations will apply in respect of article 11(1) and other articles which require information or arrangements to be recorded. Enforcing authorities should therefore seek practical solutions with the responsible person where such plans are not adequate.

## **Article 10 – Principles of prevention to be applied**

63. Where the responsible person implements any preventive and protective measures by way of taking general fire precautions they must do so on the basis of the principles specified in Part 3 of Schedule 1 to the Order. These principles express the ethos of the Order as a prevention- and mitigation-based regime where actually preventing fire and mitigating its effects when it happens are as important as means of escape and allied traditional fire precautions.
64. Enforcing authorities should ensure that risk assessments have adequately taken these principles into account.

65. It should be noted that mitigation of the effects of fire and prevention of spread of fire are specifically cited in the definition of general fire precautions under article 4. Enforcing authorities must consider whether the responsible person has done everything reasonably practicable to reduce the risk of fire and of fire developing if it breaks out.
66. In following some of these measures the responsible person will need to consider health and safety regulations and measures regarding work processes and dangerous substances. Close liaison by enforcing authorities with general health and safety enforcing authorities is advisable.

## Article 11 – Fire safety arrangements

67. Under this article, the responsible person must make and implement arrangements for planning, organising, controlling, monitoring and review of the preventative and protective measures required by the Order. This gives rise, in the first instance, to the requirement for an emergency plan including the measures for ensuring the effective operation of the plan and for ongoing checks of the appropriateness of the plan and other measures.
68. These arrangements will typically also relate to measures required by means of other articles, such as those for the appointment of competent persons to assist (organisation and control), the need to review the assessment (monitoring) and so forth. The purpose is to require effective management control of the fire safety arrangements in the premises. Enforcing authorities should take particular note of the need for arrangements made by the responsible person to be ‘appropriate, having regard to the size of [an] undertaking and the nature of its activities’. This will also include the hazards and risks that are present.
69. The arrangements must be recorded where five or more persons are employed (whether in one location or spread over a number of locations), a licence is in force, or an alterations notice requiring such a record is in force in relation to the premises.

## Article 12 – Elimination or reduction of risks from dangerous substances

70. Where a dangerous substance is present on premises, the responsible person must ensure that risk related to the presence of the substance is either eliminated or reduced so far as is reasonably practical, doing so by replacing the dangerous substance or its use with something else that reduces the risk. Where this is not reasonably practical, the responsible person must, as far as is reasonably practical, apply measures consistent with the risk assessment and appropriate to the nature of the activity, in order to control the risk and mitigate the detrimental effects of a fire.
71. Enforcing authorities are reminded that the coverage of the Order, including this article, is general fire precautions (as defined) required due to the presence of a dangerous substance. This does not extend to special technical and organisational measures related to the reduction of risk from work processes which are dealt with under health and safety legislation, enforced by the HSE.

## Article 13 – Fire-fighting and fire detection

72. Where necessary to ensure the safety of persons in case of fire (whether due to the features of the premises, the activity carried on there, any hazard present, or any other relevant circumstances), the responsible person must ensure that the premises are, to the extent that it is appropriate, equipped with fire-fighting equipment and with fire detectors and alarms. Any non-automatic fire-fighting equipment must be easily accessible and, where necessary, indicated by signs.
73. Fire-fighting equipment should be considered as a means of both prevention and protection. For example, preventing a small fire growing out of control and spreading beyond the area of origin, affecting the means of escape and posing a risk to relevant persons. It is likely therefore that some form of fire fighting equipment will be necessary in almost all cases.
74. The responsible person must, in order to safeguard the safety of all relevant persons, nominate competent persons to implement fire-fighting measures. In the case of HMOs, the Local Housing Authority and the Fire and Rescue Authority should consult on the most appropriate measures. They must establish necessary contacts with the emergency services particularly in relation to fire-fighting, rescue work, first aid and emergency medical care. Those contacts should include discussion of information the emergency services may need to render effective emergency assistance. Fire and Rescue Authorities may wish to integrate such contacts with their duties under section 7(2)(d) of the Fire and Rescue Services Act 2004.

## Article 14 – Emergency routes and exits

75. Where necessary for the purpose of safeguarding the safety of relevant persons in case of fire, the responsible person must ensure all emergency exits and routes to emergency exits are kept clear and available at all relevant times. The extent of the emergency routes and exits necessary will be determined by the findings of the risk assessment, taking full account of all the relevant circumstances of the premises.
76. Enforcing authorities will need to make a judgement, based on professional experience and use of relevant guidance and benchmark standards, to assess whether taking into account the residual risks that remain in the premises, the means of escape available for use are suitable and sufficient in the circumstances of the case to allow safe escape from the premises to a place of safety, in the event of a fire. In particular, enforcing authorities may wish to advise landlords of the need to maintain adequate security relating to fire doors.
77. All emergency routes and exits must lead as directly as possible to a place of safety and be adequate for everyone to escape quickly and safely. Article 14(2) sets out the measures for securing that the means of escape can be safely and effectively used at all relevant times, eg fire protection to escape routes, emergency lighting, etc. The risk assessment should identify any person for whom special evacuation arrangements may need to be made by virtue of their age, state of health and physical and mental abilities, or, in some circumstances, their location and activity on the premises.

## Article 15 – Procedures for serious and imminent danger and for danger areas

78. The responsible person is under a duty to provide appropriate procedures to be followed in the event of serious and imminent danger from fire to relevant persons. He must nominate a sufficient number of competent persons to implement these procedures to ensure the safety of all relevant persons. The procedures must be supported by appropriate training and instruction including safety drills (see articles 16 and 18–21). The Order defines a place of safety as “in relation to premises, means a safe area beyond the premises.” This definition is intended to make it clear that an area such as an internal courtyard enclosed by a building from which no further escape can be made without re-entering the building should not be regarded as a place of safety. However, it is recognised that where further movement is possible from an area which offers temporary protection from the fire to a place where relevant person will no longer be affected by the fire at all, ie a place away from the premises, that area may be regarded as a place of reasonable safety (the area away from the premises where relevant persons are no longer at risk being regarded as places of total safety). These phrases are explained in the published guidance documents listed in the section about article 50.
79. It is for the enforcing authority to make a judgement as to whether the responsible person has established an adequate emergency plan. Such a plan (which may include diagrams or drawings) will include requirements to inform persons of the nature of the hazard and of the steps to be taken to protect them, to stop work immediately and proceed to a place of safety, and to prevent the resumption of work where a serious danger still exists.

## Article 16 – Additional emergency measures in respect of dangerous substances

80. This article imposes various duties on the responsible person to make sure that employees and other relevant persons are safe in the event of an accident or emergency involving dangerous substances. The definition of relevant persons means any person (including the responsible person) who is or may be lawfully on the premises and any person in the immediate vicinity of the premises who is at risk from a fire on the premises. In the case of an accident or emergency involving dangerous substances the immediate vicinity could be quite wide, it is not defined in the Order as it will vary from building to building.
81. The responsible person is required to provide information on emergency arrangements to the accident and emergency services to enable them to prepare their response to an incident, and to display this information, unless the results of the risk assessment make this unnecessary. In the event of fire, the responsible person must ensure that immediate steps are taken to mitigate the effects of the fire, restore the situation to normal, and inform relevant persons who may be affected. The responsible person must also ensure that only essential personnel are permitted in the affected area, and they are issued with protective equipment and clothing, and safety equipment.

82. These obligations do not apply, however, where the risk assessment shows that the quantity of dangerous substances is such that the risk to relevant persons is only slight.

## Article 17 – Maintenance

83. The responsible person must ensure, where necessary in order to safeguard the safety of relevant persons, that the fire precautions are maintained in good working order (see also article 38, about protection of fire-fighters). This includes any facilities which have been provided under Building Regulations, the Housing Act 2004 or other legislation such as local Acts; and including any enactment repealed or revoked by the Order. Risk assessments, as required by article 9, should include references to maintenance. Enforcing authorities must consider the suitability and sufficiency of any risk assessment that does not address the matter of maintenance where there is the possibility of persons other than the employer/occupier being capable of omissions affecting and negating the effectiveness of the fire precautions. It is suggested that in such instances enforcing authorities could reasonably expect that any contract or tenancy agreement would contain such clauses that would enable the responsible person to show that acts or omissions which cause the effectiveness of fire precautions to be negated, and which place relevant persons at risk, may result in criminal liability.
84. The responsible person(s) for parts of the premises to which the Order applies may make arrangements with the occupier of parts to which the Order does not apply (e.g. domestic accommodation) for the purposes of ensuring the maintenance requirements of the Order are met. This applies to HMOs and purpose-built flats.
85. Occupiers of private domestic premises in such buildings are required to co-operate with the responsible person where the latter needs to maintain a common fire precaution. Although no direct offence is associated with a failure by the occupier of private domestic premises to co-operate with a landlord etc, any contract/agreement (whether in terms of a lease, tenancy or licence agreement) should allow access to the responsible person to enable him to maintain any fire safety provisions extending from the common parts to the domestic premises.
86. Enforcing authorities are expected to enforce the duties and in doing so seek appropriate evidence that where fire precautions extend beyond parts of premises to which the Order applies, arrangements are in place for those common precautions to be maintained.
87. Enforcing authorities are expected to use their professional judgement in evaluating the maintenance of any equipment and devices provided in accordance with the risk assessment to protect all relevant persons in and around the premises from the dangers of fire, eg fire extinguishers, fire suppression systems, alarm systems and emergency lighting. Enforcing authorities should be aware that there may be more than one responsible person who has duties to maintain premises and any facilities, equipment and devices provided in respect of the premises covered under this Order.

## Article 18 – Safety assistance

88. The responsible person must, subject to the exceptions in paragraphs (6) and (7), appoint one or more competent persons to assist them in undertaking the measure they need to take to comply with the requirements and prohibitions of this Order. A responsible person can nominate themselves. A self employed person is not required to nominate if he or she is competent for the role to be undertaken. Similarly where individuals are in partnership and one of the partners is competent, the requirements do not apply. In each case the overarching criterion is that the appointed person has appropriate competence for the role they are to undertake. It should be noted that the responsible person cannot devolve their personal responsibilities to a consultant or employee.
89. A competent person is someone who has sufficient training and experience or knowledge and other qualities to enable them to properly assist in the undertaking of preventative and protective measures. The level of necessary competence will vary according to the nature and complexity of the premises. Basic training or use of recognised guidance together with reasonable knowledge of the premises may well be sufficient for many micro, small and medium sized premises. However where the premises are higher risk, large or complex a higher level of competence is likely to be necessary.
90. The need for specific competence in specialist areas such as installation and maintenance of computerised fire detection and warning systems or designed fire engineered safety measures should be considered. Although third party accreditation schemes can give a reasonable indication of competence in a given specialist area, other means can be used. Care should be taken to ensure that where a non-accredited company is used, the level of competence is not compromised.
91. The responsible person should make arrangements for ensuring adequate co-operation between the nominated competent persons and ensure that the number of persons appointed are adequate, having regard for the size of the premises and the risks to which relevant persons are exposed.
92. The responsible person is under a duty to ensure that any competent person they appoint is given such information as is necessary to enable that person properly to carry out his functions.
93. In exercising their role, enforcing authorities will wish to seek reasonable evidence of competence of the person appointed by the responsible person to carry out their functions under article 18(1). This may be by reference to results in the premises (which ideally should show effective compliance) or by reference to other means such as third party accreditation, training records or demonstrable use and understanding of appropriate guidance.

## Article 19 – Provision of information to employees

94. The responsible person must ensure that his employees are given comprehensible and relevant information about the risks to them that have been identified and the precautions taken to ensure their safety. The requirement to provide detailed information under this article does not extend beyond employees.

95. However, taking into account the general duty of care under article 8 together with specific requirements under the Order, such as articles 4 (definition of general fire precautions) and 15 (procedures for serious and imminent danger etc) appropriate information (and where necessary, instruction) such as fire action notices and information about particular hazards should be drawn to the attention of other relevant persons, for example, to guest house/hostel occupiers, visiting workers, contractors, and tenants. Attention is also drawn to the *Fire Safety Risk Assessment Supplementary guide: Means of Escape for Disabled People*.
96. The responsible person must, before employing a child, provide the parent of the child with comprehensive and relevant information on the risks to that child that have been identified; the preventive and protective measures in place; and the steps that have been taken to inform all other relevant persons arising out of or in connection with the conduct of his premises.
97. Where a dangerous substance is present on the premises, the responsible person must provide the details of the substances to employees. Details include the name of the substance, access to any relevant safety data sheets, and legislative provisions concerning the hazards of any such substance. The information on the substances must take account of significant changes in the activity carried out or methods or work used by the responsible person, and be provided in a manner appropriate to the risk as identified in the risk assessment. He must also provide details of the significant findings in the risk assessment.

## **Article 20 – Provision of information to employers and the self-employed from outside undertakings**

98. The responsible person must notify other employers whose employees work in or around his premises of any risks, and of preventive and protective measures. They must give any other non-employees or self-employed persons appropriate instructions and information on risks. The responsible person must also ensure that the employer of other employees working on the premises, and any person from an outside undertaking working on the premises, is notified so as to be able to identify the persons nominated to implement evacuation procedures.
99. However, in enforcing this article, enforcing authorities will wish to have regard to practicality. For example it is not reasonably expected (and not desired) that each responsible person will notify the Postmaster General of the findings of their risk assessment simply because a postman or postwoman visits their premises daily. Notification of significant findings that may affect the employee would be a reasonable expectation.

## **Article 21 – Training**

100. The responsible person must ensure that his employees are provided with adequate safety training and record this where he employs five or more people (see article 11 for recording of training). Enforcing authorities will make a professional judgement about whether the responsible person has complied with his duties under this Order

by requesting evidence of the above and auditing the risk assessment. Attention is also drawn to the *Fire Safety Risk Assessment Supplementary guide: Means of Escape for Disabled People*.

101. Enforcing authorities may need to make a judgement about the status of volunteers, as in the case of many charitable organisations who use them to operate their shops and raise funds. Where such persons are involved a reasoned judgement should be made about whether there is a form of employment contract (written, oral or implied). It should be borne in mind that payment is not necessary for a contract to be valid. It is usual for there to be a form of recompense for a service provided but the form of recompense can vary significantly. Some volunteers may therefore need to be considered as employees and receive the appropriate training. In cases of doubt legal advice should be sought. Communities and Local Government would be grateful if it were informed of views taken in difficult cases so that the information can be disseminated.

## Article 22 – Co-operation and co-ordination

102. Where more than one responsible person shares, or has duties in respect of a premises (whether on a temporary or a permanent basis), each must take all reasonable steps to co-operate and co-ordinate with the others in relation to the measures they take, and inform the others of the risks to relevant persons arising out of the conduct of their undertaking.
103. In premises where an explosive atmosphere may occur the responsible person who has overall responsibility for the premises must co-ordinate the implementation of all the measures to protect the relevant persons.
104. The intention of this article is to require the responsible persons and others with analogous duties to take all reasonable steps to co-ordinate the measures they take to comply with the requirements under the Order.
105. If there is a failure to co-operate or co-ordinate between responsible persons (or those with analogous duties) the enforcing authority may need to consider enforcement action to resolve any difficulties.

## Article 23 – General duties of employees at work

106. Every employee while at work, must take reasonable care of their own safety and other relevant persons who may be affected by their acts or omissions. They must co-operate with their employer, and inform the employer of any work situation which they consider to be a serious and immediate danger. They should also inform their employer or any other employee with specific responsibility for the safety of their fellow employees of any shortcomings in the employer's protection arrangements for safety. Whilst there is no compulsion in the Order for the responsible person to include procedures for employees to alert them to any such shortcomings, enforcing authorities may wish to discuss the possibility of this with the responsible person where appropriate.

107. The duty is very similar to the duty contained in section 7 of the Health and Safety at Work etc Act 1974. The purpose of the article is to ensure that a duty of care applies to employees in relation to fire safety and may be enforced by the relevant enforcing authority under the Order. It does not however absolve the responsible person from compliance with the duty of care contained in article 8, or the requirements of other articles in the Order. It should be noted that serious failures to comply with this duty may constitute an offence under this article but does not provide an employer with a defence in any criminal proceedings (see article 32(11)).

## **Article 24 – Power to make regulations about fire precautions**

108. The article empowers the Secretary of State to make regulations about fire precautions. It re-enacts (with some modifications) section 12 of the Fire Precautions Act 1971, and gives the Secretary of State power to impose requirements on persons other than the responsible person.
109. The Secretary of State is under a duty to consult with such persons as appear to be appropriate before making any regulations. Regulations are made as secondary legislation, a Statutory Instrument, which is subject to annulment in either House of Parliament.
110. No regulations were made under this article at the time when this guidance was issued.
111. Enforcing authorities will wish to be aware that by virtue of the Interpretation Act 1978, re-enactment of the provisions of section 12 of the Fire Precautions Act 1971 retains the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 (as amended) in force, with the exception of regulation 13(3) and (4).

## Part 3 Enforcement

### Article 25 – Enforcing authorities

112. The main enforcing authority for the Order will normally be the local Fire and Rescue Authority. However there are some special areas where others have been appointed as the enforcing authority. These are listed in detail in article 25 of the Order. In summary, they are: the Health and Safety Executive; the fire service maintained by the Secretary of State for Defence; the local authority with responsibility for issue of safety certificates for certain sports grounds; and Her Majesty's Inspectors of Fire Services or other person or body authorised by the Secretary of State for Crown-owned and or occupied premises generally.
113. At sports grounds designated under the provisions of section 1 of the Safety of Sports Grounds Acts 1975 and for regulated stands within the meaning of section 26(5) of the Fire Safety and Safety of Places of Sport Act 1987 the enforcing authority will be the local authority responsible for the issue of the safety certificate under those Acts. Where a sports ground contains a regulated stand, the local authority is the enforcing authority only for the stand and the Fire and Rescue Authority is the enforcing authority for the rest of the sports ground. In many cases, the local authority is the same as the Fire and Rescue Authority, so there is only one enforcing authority. However, where they are not, it is good practice to consider having one authority responsible for the whole ground. This is a pragmatic solution, in line with the Taylor Report into the Hillsborough Disaster, which recommended that there should be one enforcing authority for sports grounds. Where a local authority receives an application for a safety certificate under either sports ground legislation cited above, they are legally obliged to consult the Fire and Rescue Authorities. The creation of Safety Advisory Groups (SAG) was another recommendation of the Taylor Report and whilst they are not statutory bodies, they have become accepted practice for managing safety at all sports grounds. Fire and Rescue Authorities are members of SAGs and should provide professional advice based on experience and implementing the legislative framework for fire safety.
114. For the avoidance of doubt all civilian prisons, young offenders institutions, immigration detention, holding or removal centres, court custody suites, customs and excise detention areas are the responsibility of the Fire Inspectors of the Crown Premises Inspection Group regardless of whether they are operated by the relevant Government department or contracted out. Local Authority Police Constabulary premises are the responsibility of the Fire and Rescue Authority for the area where they are located.

### Article 26 – Enforcement of Order

115. It is the duty of the enforcing authority to enforce this Order and regulations made under it. In doing so they must have due regard to any guidance the Secretary of State may give. Enforcing authorities, may, and it is expected, will appoint inspectors. Appointments should be made in writing and be in a form the inspector can produce to demonstrate evidence of his or her authority (see article 27).

116. The Enforcement Concordat (and Compliance Code from April 2008, subject to Parliamentary agreement) sets out the principles of good enforcement policy and procedure – many enforcing authorities have signed up to the Enforcement Concordat. Enforcing authorities are strongly encouraged to enforce in accordance with the principles of the Enforcement Concordat.
117. Fire and Rescue Authorities have the power to arrange with the Health and Safety Commission or the Office of Rail Regulation (following the transfer of safety functions in relation to railways under the Railways Act 2005) for such of the authority's functions under this Order as may be specified in the arrangements to be performed on its behalf by the Health and Safety Executive or the Office of Rail Regulation in relation to any particular workplace.
118. There are specific powers contained in section 101 of the Local Government Act 1972 which make specific provision for one local authority to arrange with another local authority for the second authority to exercise the functions of the first authority. This may be useful to enforcing authorities where enforcement at sports grounds with regulated stands means that there are two enforcing authorities. There may be other enforcement areas where this provision is helpful to make effective use of resources. Enforcing authorities wishing to explore this possibility should consult their own lawyers in the first instance.
119. The auditing and inspection of premises is an implicit element of the duty to enforce. All enforcing authorities are expected to have, or to put in place, reasonable programmes of auditing and inspection as a key part of their enforcement programme. Guidance for Fire and Rescue Authorities is in IRMP guidance note 4.
120. For the avoidance of doubt the term 'Audit' is intended to mean both the initial and any subsequent audit and inspection of a premises.
121. As a matter of good management, Fire and Rescue Authorities already target enforcement activity at premises where people are at greatest risk from fire. Enforcement activity will include audits of compliance with the Order. In setting their audit and inspection frequency programmes, enforcing authorities should also consider taking into account the value of good fire safety management.
122. As with the Fire Precautions Act 1971, enforcement action is taken at the discretion of the enforcing authority. The Order does not place enforcing authorities under a specific, express duty to issue alterations, enforcement or prohibition notices. It gives them powers to do so where they deem necessary. This is commensurate with application of good practice and the Enforcement Concordat whereby it is expected that, except in the most serious of cases or where less formal action has failed to resolve issues of non-compliance, use of formal notices will be the option of last resort.
123. Enforcing Authorities must be mindful of the ethos of the Enforcement Concordat and where the risk to relevant persons is not significant and the responsible person is willing to comply, agreed action plans may be preferable to formal enforcement notice procedures.

124. Where other methods have failed to achieve compliance or where serious or deliberate breaches of law have put people at serious risk, enforcing authorities should continue to use their discretion in deciding whether to seek a prosecution.

### **Article 27 – Powers of inspectors**

125. The powers of inspectors set out in article 27 are those necessary to ensure that the Order can be effectively enforced. Nothing in article 27 provides for a power of forcible entry, search or seizure. Inspectors may (on production of evidence of his authority) enquire whether the provisions of the Order have been complied with by identifying the responsible person and seeking their assistance. They can also require the production of plans and samples or articles to ascertain fire resistance or flammability.
126. The powers of inspectors under this Order and any regulations made under it can only be exercised at a reasonable time. What constitutes a reasonable time will depend upon the circumstances of the case and the use to which the premises are put. There may be a difference for these purposes between premises which provide sleeping accommodation and those that do not. There may also be a difference between routine inspections and those carried out where dangerous conditions are suspected (see article 31).
127. Enforcing authorities should note that by virtue of article 31(7) powers of inspectors are extended to domestic premises in HMOs where there are reasonable grounds to consider conditions exist that may require action under article 31 (prohibition notices).
128. For authorities enforcing the Order in Crown owned or occupied premises, it should be noted that by virtue of article 49(2) powers of inspectors under this article apply only in respect of premises owned by the Crown but not occupied by it. For this purpose, visiting forces are treated as the Crown.

### **Article 28 – Exercise on behalf of fire inspectors of their powers by officers of fire brigades**

129. This provision allows Crown inspectors and inspectors appointed by the Secretary of State to utilise the services of fire officers in undertaking auditing work by authorising an employee of the Fire and Rescue Authority to exercise powers of inspection. The employing Fire and Rescue Authority must be consulted and consent to such an arrangement. The power of inspection must be exercised in writing and does not empower the recipient to take enforcement action on behalf of the inspector or person appointed by the Secretary of State. The role of the employee of a Fire and Rescue Authority when authorised under this article is to undertake the audit of Crown premises and to report on the finding to the Fire Inspector or other person authorised by the Secretary of State.

## Article 29 – Alterations notices

130. The purpose of an alterations notice is twofold. First, it is intended to assist enforcing authorities in maintaining a risk-based inspection programme by highlighting potentially high life-risk premises where risk levels may change and affect the outcomes of the fire risk assessment. Secondly, it notifies the responsible person (and other persons who have duties in respect of premises) that the enforcing authority considers the premises to be of high or potentially high risk. This will affect those persons' consideration of risk in the premises.
131. An alterations notice, can be served at the discretion of the enforcing authority, in relation to premises which, due to the nature of the premises and their use constitute a serious risk to relevant persons or may do so if a change is made to them (including the fixtures, services and fittings or an increase in dangerous substances) or the use that they are put.
132. Where a notice is in force, the responsible person must notify the enforcing authority of any proposed changes in relation to the premises that may result in a significant increase in risk to persons in the event of fire. The types of changes are listed at article 29(4) and are wide ranging. When considering serving an alterations notice the enforcing authority will wish to ensure that through the explanation given, responsible persons can reasonably identify the type of change the authority considers it necessary to be notified about.
133. An alterations notice may also contain requirements to notify others that the notice has been served and the terms of the notice; to record the results of a risk assessment; to record fire safety arrangements in accordance with article 11 and before making changes to send a copy of the risk assessment, together with a summary of changes which will be made to the general fire precautions, to the enforcing authority. These additional requirements are at the discretion of the enforcing authority and should be applied as appropriate in the circumstances of the case.
134. The scope of this article is not intended to be unlimited, although it does confer a wide power to serve a notice.
135. It is expected that decisions to serve such a notice will therefore be based on recent intelligence gathered through enforcement audits and inspections or operational data gathering, possibly after an incident. However, in some cases known levels of risk for a type of premises may serve to demonstrate the point.
136. Examples of premises where use of an alterations notice maybe appropriate could include buildings which rely on critical fire protection elements such as life safety sprinklers, smoke ventilation and associated automatic fire detection; buildings where a fire engineered solution has been incorporated within the building design in order to satisfy the functional requirements of the Building Regulations; or poorly managed buildings that are prone to regular fluctuations of risk or layout or occupancy.

137. Where an enforcing authority serves an alterations notice, it is important that it explains why it has decided to take this course of action. An alterations notice served by an enforcing authority in accordance with this article must therefore explain why the enforcing authority is of the opinion that the premises constitute a serious risk or may do so if a change is made to the use to which they are put. Whilst not a requirement of the Order, it is considered to be best practice to explain the existence of a right of appeal against the notice. The bringing of an appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or withdrawn (see article 35).
138. Article 48 provides that a notice may be served on the responsible person either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address. Electronic service is also acceptable where the recipient has indicated to the enforcing authority that they are prepared to accept service in that way.

### **Article 30 – Enforcement notices**

139. An enforcement notice can only be served where the enforcing authority is of the opinion that the responsible person, or any other person mentioned in article 5(3) has failed to comply with any provision of the Order (or of regulations made under it). The measures which could be required to be taken by a notice are limited to those which are necessary to ensure the failure is remedied.
140. Before serving an enforcement notice, which would oblige a person to make alterations to premises, the enforcing authority must consult with other authorities and persons with an interest in the premises to ensure that the measures to be required by the notice are appropriate in the light of other restrictions which might apply to the premises. A failure on the part of the enforcing authority to consult does not, however, make an enforcement notice void. See article 48 on how to serve a notice.
141. An enforcement notice should set out why the responsible person has not complied with the Order and set out the provisions which have not been complied with. The notice may be framed to give the responsible person a choice between different ways of remedying the contravention – but in some cases, there may only be one solution which would adequately remedy the contravention and it would be counterproductive, time-consuming and costly to suggest there is a valid alternative. The enforcing authority must give the responsible person at least 28 days to remedy the failure. Any notice issued may be withdrawn or extended, if no appeal is pending (see article 35).

### **Article 31 – Prohibition notices**

142. A notice served under article 31 is the most stringent measure that can be instigated by an enforcing authority whilst exercising its powers under the Order. The notice, that can prohibit or restrict the use of a premises or building to which it is applied, replicates the powers that were contained within Section 10 of the Fire Precautions Act 1971.
143. This article provides the enforcing authority with a power to act in cases where it is necessary to prohibit or restrict the use of premises to ensure the safety of relevant persons. The nature of the risk must be such that it is essential to act quickly and without any unnecessary delay.

144. A prohibition notice must state the enforcing authority's opinion that the use of the premises involves (or will involve) a risk to relevant persons so serious that use of the premises ought to be prohibited or restricted. It should specify the matters which in their opinion give rise to the risk and direct that such use be prohibited or restricted until the specified matters have been remedied. See article 48 on how to serve a notice.
145. Enforcing authorities may include in the prohibition notice directions as to the measures which would need to be taken by the responsible person to remedy the matters specified in the notice and the Secretary of State expects that where practicable they will do so.
146. It is for the enforcing authority to decide on the time by which the notice is to take effect. The notice should take immediate effect if there is an imminent risk of serious personal injury. It takes effect when specified conditions arise, eg premises used as a warehouse but it is anticipated that it will be used for a rave party by thousands of people with very limited means of escape provision. The prohibition limits the use and numbers etc.
147. Enforcing authorities are under a duty to notify, where practicable, the local housing authority before serving a notice in relation to a HMO. If it is not practicable to notify the local housing authority, a failure to notify will not make the notice void.
148. Having served an article 31 notice the enforcing authority may withdraw the notice, or amend the effect of the notice, at any time having been satisfied that the conditions are such that the risk to relevant persons is not serious.

## Part 4 Offences and Appeals

### Article 32 – Offences

149. Article 32 sets out in detail the offences that can be committed by a responsible person or any other person mentioned in article 5(3) and those offences that can be committed by any person.
150. This article also provides details of the criminal sanctions for failure to comply with the requirements and prohibitions imposed by the Order and any regulations made under it. The most serious offences are subject to a maximum penalty of a fine not exceeding the statutory maximum in a magistrates' court (currently £5,000) or on conviction on indictment to an unlimited fine and/or a term not exceeding two years. Other, less serious offences are subject to lesser maximum penalties.
151. Where an offence under the Order is committed by a body corporate, and it can be proved that the offence is attributable to the act of an officer of the body corporate, then that officer can be proceeded against as well as the body corporate itself. Similarly, if it can be proved that the affairs of a body corporate are managed by its members, then those members can also be proceeded against.

### Article 33 – Defence

152. Article 33 provides a defendant with a defence of due diligence ie it is open to the person charged with an offence under the Order to prove he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.
153. The defence of due diligence does not, however, apply where the responsible person is alleged to have failed to have taken such general fire precautions as will ensure the safety of his employees, or to have failed to eliminate or reduce the risk from a dangerous substance present on the premises. Nor does the defence apply to an employer where failure to comply with the provisions of the Order is due to an act or default of his employees or appointed competent persons.

### Article 34 – Onus of proving limits of what is reasonably practicable

154. Article 34 provides that in any proceedings for an offence under the Order consisting of a failure to comply with a duty or requirement, so far as is reasonably practicable, it is for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.
155. What this means in practice is a change from previous fire law. The effect is that it is for the responsible person to prove what he has done is sufficient in the circumstances. Under previous laws, such as the Fire Precautions Act 1971, the enforcing authority had to prove that it was not sufficient.

## **Article 35 – Appeals**

156. A person who has been served with an alterations notice, an enforcement notice, a prohibition notice, or a notice given by the Fire and Rescue Authority in respect of the position and marking of fire-fighters' switches for luminous tube signs (a counter notice), may within 21 days from the day on which the notice is served, appeal to a magistrates' court.
157. By bringing an appeal the notice is suspended until the appeal is finally disposed of or withdrawn. The only exception to this is the prohibition notice. Prohibition notices are not suspended unless the court directs otherwise. The court can either cancel or affirm the (any) notice and if it affirms the notice can do so either in its original form or with such modification as the court thinks fit.

## **Article 36 – Determination of disputes by Secretary of State**

158. Where the responsible person has failed to comply with the Order and cannot agree with the enforcing authority what measures are necessary to remedy the failure, the Secretary of State may be approached to make a determination of the dispute. Both parties must make the approach. This approach can be made when a notice has been served by the enforcing authority on a responsible person.
159. The Secretary of State may request in writing further information from both parties within a time specified in the request. If the information is not received within the specified time the Secretary of State may refuse to consider the matter further.
160. Once the Secretary of State has made a determination, the enforcing authority may not take enforcement action that would be in conflict with his/her determination. However, this would not apply where, after the date of the determination, there has been a change to the premises or to the use of the premises that significantly increases the risk to relevant persons.
161. RRO Guidance Note No. 2 provides more detail on the procedures to be followed by enforcing authorities wishing to use this route.

## Part 5 Miscellaneous

### Article 37 – Fire-fighters’ switches for luminous tube signs etc.

162. Article 37 carries forward existing requirements (in the Local Government (Miscellaneous Provisions) Act 1982 and various Local Acts) for the protection of fire-fighters from electrocution when fighting fires at buildings which have high voltage fluorescent signs. The article continues the protection provided by existing legislation and should continue to be enforced using current arrangements.
163. The Order is silent on suspension or otherwise of counter notices under article 37(7). This is because article 37 assumes that the equipment in question (the cut-off switch and the luminous sign) has yet to be installed. Installation of the sign without the requirements for appropriate location etc of a cut-off switch having been satisfied is an offence. Neither the person responsible or the Fire and Rescue Authority’s notices as proposals and opposition to the proposal can be taken out of force or suspended. The matter is for the courts to determine. Installation of the sign during the appeal would remain an offence.

### Article 38 – Maintenance of measures provided for protection of fire-fighters

164. The purpose of this article is to ensure that the responsible person establishes a suitable system of maintenance for any measures (such as those under article 37) provided for the safety of fire-fighters, whether under the provisions of the Order or any other enactment. It covers, for example, fire fighting water supplies, access and hard standing for fire appliances, fixed fire fighting systems operated by the Fire and Rescue Authority, some fire suppression systems and fire-fighting stairs and lifts if they have been provided under the requirements of Building Regulations or any other enactment.
165. However, it should be noted that many features are provided to aid fire-fighters in protecting persons through fire-fighting or rescue. When considering non-compliance, enforcing authorities should note that it must be shown that the failure to maintain would affect the ability of fire-fighters to safely fight the fire or carry out rescues which in turn places one or more relevant persons at risk of death or serious injury in the case of a fire. Where a responsible person has failed to maintain measures provided for the protection of fire-fighters enforcing authorities have a duty to undertake appropriate enforcement action.
166. For an offence to be committed the enforcing authority must show that there was a failure on the part of the responsible person, or other person mentioned in article 5(3), to maintain the measures provided for the protection of fire-fighters and that as a result the failure places one or more relevant persons at risk. It may not be sufficient that the failure to maintain such provisions only places fire-fighters at risk, unless by doing so it also affects the safety of the relevant persons to which this article applies. However it is very unlikely that in practice such a failure would only affect the safety of fire-fighters.

### **Article 39 – Civil liability for breach of statutory duty**

167. This article makes it clear that breach of a duty contained in the Order does not give rise to a claim for damages for breach of statutory duty, unless it is a breach of duty by an employer that causes damage to an employee. It maintains the existing legal position, taking into account the UK's obligation under European law that an employer must be responsible and liable for the safety of his employees.

### **Article 40 – Duty not to charge employees for things done or provided**

168. The article prohibits employers from charging employees for the provision of training or equipment or anything else done in consequence of the Order. It is similar to existing provisions.

### **Article 41 – Duty to consult employees**

169. Article 41 amends the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996 so that they refer to the Order.
170. The purpose of the article is to amend existing obligations on employers to consult with their workforce so that they are also required to consult in respect of general fire precautions.

### **Article 42 – Special provisions in respect of licensed etc. premises**

171. The purpose of this article is to make specific provision for consultation between the enforcing authority and licensing authority (for example, CSCI and Ofsted). It should be noted that “licensing” includes certification and registration; and the issue of licences includes their renewal, transfer or variation.
172. The licensing authority must ensure that the enforcing authority has the opportunity to make representations before issuing the licence. Enforcing authorities, when considering the suitability and sufficiency of a fire risk assessment, should take into account matters that may be drawn to their attention by the licensing authority as part of the notification process. Once the licence is issued, the enforcing authority must notify the licensing authority of any action that the enforcing authority takes in relation to premises to which the licence relates, for example, if the enforcing authority is going to require any changes by means of formal enforcement action.
173. Article 11 requires that the risk assessment must be recorded where a licence is in force, regardless of the number of employees. Even for small licensed premises, therefore, the risk assessment will be available for the enforcing authority and the licensing authority to consider.

## Article 43 – Suspension of terms and conditions of licences dealing with same matters as this Order

174. The article is intended to bring the fire safety of licensed (including certificated and registered) premises into line with the ethos of the Order for minimum overlap of regimes. A licence issued by a licensing authority cannot impose any term, condition or restriction that could be imposed under the Order. This essentially means that licences cannot contain conditions relating to fire safety, as fire safety matters should be covered by the risk assessment carried out by the responsible person – which must be recorded regardless of the number of employees (see article 11). The enforcing authority can check this has been complied with when it is consulted about the licence application as part of the notification process. Where the enforcing authority takes action under the Order, issuing an enforcement notice, for example, it must notify the licensing authority. If the licensing authority and the enforcing authority are the same body, then this does not apply.
175. The Department for Culture, Media and Sport has published a revised version of the Guidance to local authorities on the discharge of their functions under the Licensing Act 2003. This has been laid before Parliament and came into force on 28 June 2007.

## Article 44 – Suspension of byelaws dealing with same matters as this Order

176. Article 44 disappplies the effect of any byelaw in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under the Order.
177. This article is of similar effect to article 43 (suspension of licence conditions). It is intended to ensure there is no conflict between byelaws and the Order.

## Article 45 – Duty to consult enforcing authority before passing plans

178. The article provides for consultation between local authorities and enforcing authorities for the Order in respect of plans deposited with local authorities in accordance with Building Regulations. The provision is necessary to ensure appropriate consultation between those authorities involved at the construction stage and later stages of the life of a building. Regulation 13 of the Building (Approved Inspectors etc) Regulations 2000 (SI 2000/2532) makes similar provision for consultation by Approved Inspectors.
179. The consultation should clearly identify those fire precautions they believe are necessary and the rationale for those fire precautions. This consultation process should, therefore, ensure that there will be no significant increase in the number of occasions when additional fire precautions will be required after Building Regulation approval has been given. Guidance to enforcing authorities on the consultation process is provided within the Procedural Guidance<sup>9</sup> document issued by Communities and Local Government.

<sup>9</sup> See: [www.planningportal.gov.uk/uploads/br/BR\\_PDFs\\_firesafety.pdf](http://www.planningportal.gov.uk/uploads/br/BR_PDFs_firesafety.pdf)

180. Where enforcing authorities are consulted and are of the view that likely changes to the premises when they come into use may require additional fire precautions (eg introduction of racking into a speculatively built warehouse) it will be helpful if details can be passed back as part of the consultation process.

### **Article 46 – Other consultation by authorities**

181. Where a government department or other public authority (which in this case includes an Approved Inspector) intends to take action in respect of premises (to which the Order applies) which will or may result in changes to any of the measures required under this Order, they must consult the enforcing authority for the premises before taking action.
182. Enforcing authorities should seek to ensure appropriate arrangements and protocols are in place for this purpose.

### **Article 47 – Disapplication of the Health and Safety at Work etc. Act 1974 in relation to general fire precautions**

183. The Health and Safety at Work etc. Act 1974 (the 1974 Act) is broad in scope and general fire safety is within that scope. To avoid dual application and enforcement, article 47 provides that the Act and any regulations made under it shall not apply to premises to which the Order applies, in so far as the Act or regulations relate to any matter in relation to which requirements are or could be imposed by or under the Order.
184. The effect of the article is that other than for COMAH sites, ie sites governed by the Control of Major Accident Hazards Regulations 1999 (SI 1999/743), Part 1 of the 1974 Act is disappplied. For example, enforcement of the general health and safety duties under the Act or under the Management of Health and Safety at Work Regulations cannot require general fire precautions to be taken – unless the enforcing authority for the Order is the HSE and it would be appropriate to use the provisions of the Act if fire and other safety measures need to be addressed as part of one enforcement action.
185. However, there are two exceptions. First where the enforcing authority under the Order is the HSE, for example in relation to nuclear premises, any requirements of the Health and Safety at Work Act 1974 and its subordinate legislation relating to general fire precautions will continue to apply. Second, where the Control of Major Hazards Regulations 1999 (SI 1999/743) applies, the Order will apply and so will any requirements of those Regulations relating to general fire safety precautions.

### **Article 48 – Service of notices etc.**

186. This article is administrative. It provides for how a notice may be legally served – either in paper copy or electronically. It is largely modelled on section 38 of the Fire Precautions Act 1971 but brought up to date to account for modern technology.

187. Where the responsible person is to be served with a notice, service may be either by delivering, posting, or leaving it at his proper address (ie, his or her last known address, or any address in the United Kingdom which he or she has specified).
188. In the case of a body corporate, service may be to the secretary or clerk of that body at the registered office; and in the case of a partnership, it may be to a partner or person having control or management of the business at the principal office.
189. Electronic service is acceptable where the recipient has indicated to the enforcing authority that they are prepared to accept service in that way.
190. If the person seeking to serve a notice cannot find the responsible person, delivery may be to a responsible individual resident on the premises, or, failing whom, by affixing a copy of the notice to some conspicuous part of the premises.

### **Article 49 – Application to the Crown and to the Houses of Parliament**

191. Article 49 applies the provisions of the Order (except for articles 29, 30 and 32 to 36 (the enforcement provisions)) to the Crown, subject to the provisions in the rest of that article. Article 27 (inspectors' powers of entry) and 31 (prohibition notices) bind the Crown only in relation to premises owned but not occupied by the Crown. Nothing in the Order authorises the entry of premises occupied by the Crown. Nothing in the Order authorises proceedings being brought against the Queen in her private capacity.

### **Article 50 – Guidance**

192. Article 50 provides that the Secretary of State must ensure that such guidance, as he considers appropriate, is available to assist responsible persons in discharging their duties under the Order. Communities and Local Government has produced guidance for responsible persons in the types of premises covered by the Order. But, in addition, the Secretary of State may adopt guidance written by others; so, for example, British Standards may be cited as the appropriate guidance, as may a sector specific guide produced by a third party.
193. The CLG guides are:
  - Offices and shops
  - Premises providing sleeping accommodation
  - Residential care premises
  - Small and medium places of assembly
  - Large places of assembly
  - Factories and warehouses

- Theatres, cinemas and similar premises
- Educational premises
- Healthcare premises
- Transport premises and facilities
- Open air events
- Animal premises and stables and,
- Means of escape for disabled people (supplementary guide).

194. The Secretary of State may revise the guidance from time to time.

### **Article 51 – Application to visiting forces, etc.**

195. Article 51 provides that the Order applies to a visiting force or an international headquarters or defence organisation only to the extent that it applies to the Crown. Enforcement for these premises is by the fire service maintained by the Secretary of State for Defence.

### **Article 52 – Subordinate Provisions**

196. Some articles of the Order are designated as subordinate provisions. This means that they can be amended using (in most cases) affirmative Parliamentary procedure, rather than the fuller procedures used for the Order itself, which would be necessary for any other amendments to the Order. These articles are listed in the Order.

197. Should the Order be amended, a circular will be issued to enforcing authorities.

### **Article 53 and Schedules 1 to 5 – Repeals, revocations, amendments and transitional provisions**

198. This article, and the Schedules, deal with repeals, revocations, amendment and transitional provisions.