

FIRE SAFETY THE RISKS AND COSTS OF NON-COMPLIANCE WITH THE REGULATIONS

INTRODUCTION

The changes to fire regulations for commercial buildings which were introduced on 1 October 2006 by the Regulatory Reform (Fire Safety) Order 2005 (Order) are not widely understood, and otherwise law abiding businesses and individual directors are being prosecuted. Urgent action is now required if occupiers have not already carried out a fire risk assessment and acted upon it.

To which buildings does the Order apply?

Fire authorities no longer issue fire certificates and those previously issued have ceased to have any legal status. Many occupiers of commercial buildings did not require a fire certificate under the old regime and may not be aware that they now need to take action. The Order applies to virtually all types of premises and nearly every type of building, structure and open space. By way of example it applies to:-

- Offices;
- Shops;
- Care homes and hospitals and other premises that provide care;
- Community halls, places of worship and other community premises;
- Clubs and restaurants;
- Stores and sports centres;
- Tents and marquees;
- Hotels and hostels;
- Factories and warehouses.

The Order does not apply to individual houses and flats, but does apply to the common areas in a block of flats and houses in multiple occupation.

Who is the Responsible Person?

The Order stipulates that the obligation to comply with the regulations rests with the 'Responsible Person'. Anyone who has control of premises or who has a degree of control over certain areas or systems within a building may be a "Responsible Person".

This could be:-

- An employer – for those parts of premises it has control over;
- An owner/managing agent in respect of shared parts of premises or shared fire safety equipment such as fire warning systems/sprinklers;
- An occupier (e.g. a self-employed person or voluntary organisations if they have any control); or
- Any other person who has some control over part of the premises.

In many premises the Responsible Person will be obvious but there will often be situations where several "people" have responsibility. A company, partnership, charity or other organisation can be a "Responsible Person".

What must the Responsible Person do to comply?

The Responsible Person must carry out a fire risk assessment. The task can be undertaken by a competent person (e.g. a surveyor specialising in carrying out fire risk assessment). However the Responsible Person at the premises will remain responsible for complying with the Order, and training staff.

The Responsible Person (either on their own or together with another Responsible Person) must as far as reasonably practicable, ensure that everybody likely to be at the premises or nearby can escape safely if there is a fire. Remember that the requirements cover open-air venues as well as buildings.

Particular attention must be paid to people who may have a disability or who might need special help (e.g., because of how or where they work).

Listed Buildings

Whilst the new regulatory requirements concern us all, they are of particular concern for owners and occupiers of listed buildings which may be more difficult to make compliant. Listed Building Consent will almost certainly be required to enable work to be carried out to a listed building to ensure compliance with fire regulations.

Negotiations over solutions to achieve compliance with fire regulations may involve a number of different people or organisations including the owner, occupier, local planning authority conservation officer, building control officer and the fire authority.

Enforcement

Local Fire & Rescue Services enforce the legislation. An inspector appointed by a fire authority has extensive powers including power to enter and to inspect any premises and anything in them; power to conduct interviews to find out whether the Order has been complied with and to identify the Responsible Person in relation to the premises; power to require the production and take copies of any records; and powers to take samples of substances to ascertain their fire resistance or flammability.

The fire authority has a number of options for dealing with breaches including:-

Informal Notice

Notification of fire safety deficiencies – the notice will identify the deficiencies and the steps which the enforcing officer considers necessary to remedy them. The Notice is issued before formal enforcement action is taken. The Responsible Person will be given up to 28 days in which to make progress towards remedying the specified deficiencies.

Improvement Notice

If there has been a failure to comply with the requirements imposed by the legislation an Improvement Notice or Enforcement Notice may be served specifying the matters constituting failure to comply with the relevant legislation and identifying action required to remedy the specified failures to ensure compliance.

Such a notice will specify a date by which the Reasonable Person must carry out the works.

Prohibition Notice

If the enforcing officer considers the use of the premises involves or will involve risk to persons on the premises in the event of fire so serious that the use of the premises (or part of them) ought to be prohibited or restricted, they may serve a Prohibition Notice prohibiting the use immediately or until remedial action has been taken. There is a right of appeal to a Magistrates Court against the content of any notice. Any such appeal must be lodged within 21 days of the date of service of the notice upon the Reasonable Person.

Prosecution Issues

Failure to comply with a Prohibition Notice or an Enforcement or Improvement Notice within the time specified in the notice (or such further time as the fire authority may at its discretion grant) is a criminal offence. A “person” found guilty of an offence is liable:

- on summary conviction (by the Magistrates Court) to a fine not exceeding the statutory maximum (currently £5,000); or
- on conviction, on indictment (by the Crown Court) to an unlimited fine or to imprisonment for a term not exceeding two years, or both.

The Regulations provide separately for prosecution of a director, manager, company secretary or other similar officer of a body corporate in circumstances where an offence is committed by a body corporate (which of course can be a company, university, school, charity, local authority, etc). If it can be demonstrated that the offence was committed with the consent or connivance of, or attributable to any neglect on the part of any director, manager, secretary or other similar officer or any person purporting to act in such capacity, that person as well as the body corporate is guilty of the offence.

The Costs of Non-compliance

There have been a number of prosecutions since the new fire regulations were introduced in October 2006. A Colchester restaurateur was fined £10,000 and ordered to pay costs of £15,000.

A Basingstoke restaurant (prosecuted for non-compliance with an Enforcement Notice served under the previous regulations) was fined £33,000 plus costs – including the statutory maximum fine per offence for failure to comply with an Enforcement Notice.

In Surrey a stationery company was fined £15,000 (£3,000 per offence) plus costs. The fire authority acknowledged the cooperation that they had received from the company and the work carried out to achieve compliance, but the Magistrates clearly took a very dim view of the situation.

Conclusion

Before the current fire regulations came into force prosecutions by fire authorities were relatively few and far between and tended to follow the event, where a fire in premises revealed serious breaches of the legislation. It is quite clear from the recent flurry of prosecutions that fire authorities are not afraid to bring prosecutions before a serious fire actually occurs where lapses have come to their attention.

Should you have any concerns or queries about any aspect of the information contained in this briefing note, please contact our Health & Safety Team Catherine Davey (+44 (0)1483 734234) and Sarah Murray (+44 (0)1483 734207)

This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.