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STATUTORY INSTRUMENTS

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**2005 No. 1541**

**The Regulatory Reform (Fire Safety) Order 2005**

**PART 3**

**ENFORCEMENT**

**Enforcing authorities**

- 25.** For the purposes of this Order, “enforcing authority” means—
- (a) the fire and rescue authority for the area in which premises are, or are to be, situated, in any case not falling within any of sub-paragraphs (b) to (e);
  - (b) the Health and Safety Executive in relation to—
    - (i) any premises for which a licence is required in accordance with section 1 of the Nuclear Installations Act 1965<sup>(1)</sup> or for which a permit is required in accordance with section 2 of that Act;
    - (ii) any premises which would, except for the fact that it is used by, or on behalf of, the Crown, be required to have a licence or permit in accordance with the provisions referred to in sub-paragraph (i);
    - (iii) a ship, including a ship belonging to Her Majesty which forms part of Her Majesty’s Navy, which is in the course of construction, reconstruction or conversion or repair by persons who include persons other than the master and crew of the ship;
    - (iv) any workplace which is or is on a construction site within the meaning of regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996<sup>(2)</sup> and to which those Regulations apply, other than construction sites referred to in regulation 33 of those Regulations.
  - (c) the fire service maintained by the Secretary of State for Defence in relation to—
    - (i) premises, other than premises falling within paragraph (b)(iii), occupied solely for the purposes of the armed forces of the Crown;
    - (ii) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964<sup>(3)</sup>;
    - (iii) premises, other than premises falling within paragraph (b)(iii), which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;
  - (d) the relevant local authority in relation to premises which consist of—

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<sup>(1)</sup> 1965 c. 57; relevant amending instruments are S.I.1974/2056 and 1990/1918.

<sup>(2)</sup> S.I. 1996/1592.

<sup>(3)</sup> 1964 c. 5.

- (i) a sports ground designated as requiring a safety certificate under section 1 of the Safety of Sports Grounds Act 1975<sup>(4)</sup> (safety certificates for large sports stadia);
- (ii) a regulated stand within the meaning of section 26(5) of the Fire Safety and Safety of Places of Sport Act 1987<sup>(5)</sup> (safety certificates for stands at sports grounds);
- (e) a fire inspector, or any person authorised by the Secretary of State to act for the purposes of this Order, in relation to—
  - (i) premises owned or occupied by the Crown, other than premises falling within paragraph (b)(ii) and (c));
  - (ii) premises in relation to which the United Kingdom Atomic Energy Authority is the responsible person, other than premises falling within paragraph (b)(ii)).

### **Enforcement of Order**

**26.**—(1) Every enforcing authority must enforce the provisions of this Order and any regulations made under it in relation to premises for which it is the enforcing authority and for that purpose, except where a fire inspector or other person authorised by the Secretary of State is the enforcing authority, may appoint inspectors.

(2) In performing the duty imposed by paragraph (1), the enforcing authority must have regard to such guidance as the Secretary of State may give it.

(3) A fire and rescue authority has power to arrange with the Health and Safety Commission or the Office of Rail Regulation 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, as the case may be, (with or without payment) in relation to any particular workplace.

### **Powers of inspectors**

**27.**—(1) Subject to the provisions of this article, an inspector may do anything necessary for the purpose of carrying out this Order and any regulations made under it into effect and in particular, so far as may be necessary for that purpose, shall have power to do at any reasonable time the following —

- (a) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned above and to inspect the whole or part of the premises and anything in them, where such entry and inspection may be effected without the use of force;
- (b) to make such inquiry as may be necessary for any of the following purposes—
  - (i) to ascertain, as regards any premises, whether the provisions of this Order or any regulations made under it apply or have been complied with; and
  - (ii) to identify the responsible person in relation to the premises;
- (c) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records (including plans)—
  - (i) which are required to be kept by virtue of any provision of this Order or regulations made under it; or
  - (ii) which it is necessary for him to see for the purposes of an examination or inspection under this article,
 and to inspect and take copies of, or of any entry in, the records;

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(4) 1975 c. 52. Section 1 was amended by section 19(2) of the Fire Safety and Safety of Places of Sports Act 1987 (c. 27).

(5) 1987 c. 27.

- (d) to require any person having responsibilities in relation to any premises (whether or not the responsible person) to give him such facilities and assistance with respect to any matters or things to which the responsibilities of that person extend as are necessary for the purpose of enabling the inspector to exercise any of the powers conferred on him by this article;
- (e) to take samples of any articles or substances found in any premises which he has power to enter for the purpose of ascertaining their fire resistance or flammability; and
- (f) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to the safety of relevant persons, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is, in the circumstances, necessary).

(2) An inspector must, if so required when visiting any premises in the exercise of powers conferred by this article, produce to the occupier of the premises evidence of his authority.

(3) Where an inspector proposes to exercise the power conferred by paragraph (1)(f) he must, if requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(4) Before exercising the power conferred by paragraph (1)(f) an inspector must consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

#### **Exercise on behalf of fire inspectors etc. of their powers by officers of fire brigades**

**28.**—(1) The powers conferred by article 27 on a fire inspector, or any other person authorised by the Secretary of State under article 25(e), are also exercisable by an employee of the fire and rescue authority when authorised in writing by such an inspector for the purpose of reporting to him on any matter falling within his functions under this Order; and articles 27(2) and (3) and 32(2)(d) to (f), with the necessary modifications, apply accordingly.

(2) A fire inspector, or other person authorised by the Secretary of State, must not authorise an employee of a fire and rescue authority under this article except with the consent of the fire and rescue authority.

#### **Alterations notices**

**29.**—(1) The enforcing authority may serve on the responsible person a notice (in this Order referred to as “an alterations notice”) if the authority is of the opinion that the premises—

- (a) constitute a serious risk to relevant persons (whether due to the features of the premises, their use, any hazard present, or any other circumstances); or
- (b) may constitute such a risk if a change is made to them or the use to which they are put.

(2) An alterations notice must—

- (a) state that the enforcing authority is of the opinion referred to in paragraph (1); and
- (b) specify the matters which in their opinion, constitute a risk to relevant persons or may constitute such a risk if a change is made to the premises or the use to which they are put.

(3) Where an alterations notice has been served in respect of premises, the responsible person must, before making any of the changes specified in paragraph (4) which may result in a significant increase in risk, notify the enforcing authority of the proposed changes.

(4) The changes referred to in paragraph (3) are—

- (a) a change to the premises;

- (b) a change to the services, fittings or equipment in or on the premises;
  - (c) an increase in the quantities of dangerous substances which are present in or on the premises;
  - (d) a change to the use of the premises.
- (5) An alterations notice may include a requirement that, in addition to the notification required by paragraph (3), the responsible person must —
- (a) take all reasonable steps to notify the terms of the notice to any other person who has duties under article 5(3) in respect of the premises;
  - (b) record the information prescribed in article 9(7), in accordance with article 9(6);
  - (c) record the arrangements required by article 11(1), in accordance with article 11(2); and
  - (d) before making the changes referred to in paragraph (3), send the enforcing authority the following —
    - (i) a copy of the risk assessment; and
    - (ii) a summary of the changes he proposes to make to the existing general fire precautions.
- (6) An alterations notice served under paragraph (1) may be withdrawn at any time and, for the purposes of this article, the notice is deemed to be in force until such time as it is withdrawn or cancelled by the court under article 35(2).
- (7) Nothing in this article prevents an enforcing authority from serving an enforcement notice or a prohibition notice in respect of the premises.

### **Enforcement notices**

**30.**—(1) If 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 this Order or of any regulations made under it, the authority may, subject to article 36, serve on that person a notice (in this Order referred to as “an enforcement notice”).

- (2) An enforcement notice must—
- (a) state that the enforcing authority is of the opinion referred to in paragraph (1) and why;
  - (b) specify the provisions which have not been complied with; and
  - (c) require that person to take steps to remedy the failure within such period from the date of service of the notice (not being less than 28 days) as may be specified in the notice.
- (3) An enforcement notice may, subject to article 36, include directions as to the measures which the enforcing authority consider are necessary to remedy the failure referred to in paragraph (1) and any such measures may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention.
- (4) Where the enforcing authority is of the opinion that a person’s failure to comply with this Order also extends to a workplace, or employees who work in a workplace, to which this Order applies but for which they are not the enforcing authority, the notice served by them under paragraph (1) may include requirements concerning that workplace or those employees; but before including any such requirements the enforcing authority must consult the enforcing authority for that workplace.
- (5) Before serving an enforcement notice which would oblige a person to make an alteration to premises, the enforcing authority must consult—
- (a) in cases where the relevant local authority is not the enforcing authority, the relevant local authority;

- (b) in the case of premises used as a workplace which are within the field of responsibility of one or more enforcing authorities within the meaning of Part 1 of the Health and Safety at Work etc Act 1974<sup>(6)</sup>, that authority or those authorities; and section 18(7) of the Health and Safety at Work etc Act 1974 (meaning in Part I of that Act of “enforcing authority” and of such an authority’s “field of responsibility”) applies for the purposes of this article as it applies for the purposes of that Part;
  - (c) in the case of a building or structure in relation to all or any part of which an initial notice given under section 47 of the Building Act 1984<sup>(7)</sup> is in force, the approved inspector who gave that initial notice;
  - (d) in the case of premises which are, include, or form part of, a designated sports ground or a sports ground at which there is a regulated stand, the relevant local authority, where that authority is not the enforcing authority; and for the purposes of this sub-paragraph, “sports ground” and “designated sports ground” have the same meaning as in the Safety of Sports Grounds Act 1975 and “regulated stand” has the same meaning as in the Fire Safety and Safety of Places of Sport Act 1987;
  - (e) any other person whose consent to the alteration would be required by or under any enactment.
- (6) Without prejudice to the power of the court to cancel or modify an enforcement notice under article 35(2), no failure on the part of an enforcing authority to consult under paragraphs (4) or (5) makes an enforcement notice void.
- (7) Where an enforcement notice has been served under paragraph (1)—
- (a) the enforcing authority may withdraw the notice at any time before the end of the period specified in the notice; and
  - (b) if an appeal against the notice is not pending, the enforcing authority may extend or further extend the period specified in the notice.

### **Prohibition notices**

**31.**—(1) If the enforcing authority is of the opinion that use of premises involves or will involve a risk to relevant persons so serious that use of the premises ought to be prohibited or restricted, the authority may serve on the responsible person or any other person mentioned in article 5(3) a notice (in this Order referred to as “a prohibition notice”).

(2) The matters relevant to the assessment by the enforcing authority, for the purposes of paragraph (1), of the risk to relevant persons include anything affecting their escape from the premises in the event of fire.

(3) A prohibition notice must—

- (a) state that the enforcing authority is of the opinion referred to in paragraph (1);
- (b) specify the matters which in their opinion give or, as the case may be, will give rise to that risk; and
- (c) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the specified matters have been remedied.

(4) A prohibition notice may include directions as to the measures which will have to be taken to remedy the matters specified in the notice and any such measures may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the matters.

(5) A prohibition or restriction contained in a prohibition notice pursuant to paragraph (3)(c) takes effect immediately it is served if the enforcing authority is of the opinion, and so states in the

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(6) 1974 c. 37.

(7) 1984 c. 55. Section 47 was amended by S.I. 1996/1905.

notice, that the risk of serious personal injury is or, as the case may be, will be imminent, and in any other case takes effect at the end of the period specified in the prohibition notice.

(6) Before serving a prohibition notice in relation to a house in multiple occupation, the enforcing authority shall, where practicable, notify the local housing authority of their intention and the use which they intend to prohibit or restrict.

(7) For the purposes of paragraph (6)—

“house in multiple occupation” means a house in multiple occupation as defined by sections 254 to 259 of the Housing Act 2004<sup>(8)</sup>, as they have effect for the purposes of Part 1 of that Act (that is, without the exclusions contained in Schedule 14 to that Act); and

“local housing authority” has the same meaning as in section 261(2) of the Housing Act 2004.

(8) Without prejudice to the power of the court to cancel or modify a prohibition notice under article 35(2), no failure on the part of an enforcing authority to notify under paragraph (6) makes a prohibition notice void.

(9) Where a prohibition notice has been served under paragraph (1) the enforcing authority may withdraw it at any time.

(10) In this article, “premises” includes domestic premises other than premises consisting of or comprised in a house which is occupied as a single private dwelling and article 27 (powers of inspectors) shall be construed accordingly.

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(8) 2004 c. 34.