
STATUTORY INSTRUMENTS

1997 No. 1840

The Fire Precautions (Workplace) Regulations 1997

PART IV

ENFORCEMENT AND OFFENCES

Disapplication of the 1974 Act

9.—(1) For the purposes of sections 16 to 24, 26, 28, 33 to 40, 42, 46 and 47 of the 1974 Act, the provisions of the workplace fire precautions legislation shall be deemed (to the extent they would otherwise be so regarded) not to be provisions of health and safety regulations or provisions forming part of the relevant statutory provisions.

(2) In these Regulations “the workplace fire precautions legislation” means—

- (a) Part II of these Regulations; and
- (b) regulations 1 to 4, 6 to 10 and 11(2) and (3) of the 1992 Management Regulations (as amended by Part III of these Regulations), in so far as those regulations—
 - (i) impose requirements concerning general fire precautions to be taken or observed by an employer; and
 - (ii) have effect in relation to a workplace in Great Britain other than an excepted workplace,

and for this purpose “general fire precautions” means measures which are to be taken or observed in relation to the risk to the safety of employees in case of fire in a workplace, other than any special precautions in connection with the carrying on of any manufacturing process.

(3) In this regulation “health and safety regulations” and “the relevant statutory provisions” have the meanings given to them by the 1974 Act⁽¹⁾.

Enforcement

10.—(1) It shall be the duty of every fire authority to enforce within their area the workplace fire precautions legislation.

(2) A fire authority may perform their functions under these Regulations through inspectors appointed by them pursuant to section 18(1) of the 1971 Act.

(3) Subject to paragraph (4), where such an inspector, or an officer of a fire brigade acting under section 20 of the 1971 Act as applied by regulation 17, expresses to a relevant person any opinion to the effect that that person or (as the case may be) his employer or principal is in breach of the workplace fire precautions legislation in respect of any workplace, then, if that person requests that such an opinion be put in writing, the inspector or (as the case may be) officer shall, as soon as practicable, give to that person or (where the opinion concerns his employer or principal) his employer or principal a written opinion which explains—

⁽¹⁾ See section 53 of the 1974 Act.

- (a) the breach of the workplace fire precautions legislation; and
- (b) what action could be taken to remedy it.

(4) No written opinion need be given under paragraph (3) if a written notice of intent under regulation 13(3) or 16(2), or an enforcement notice under regulation 13(1), is issued in respect of the relevant breach.

(5) For the purposes of paragraph (3), a “relevant person” is—

- (a) an employer who has, by virtue of regulation 3(1), obligations in respect of the workplace in question under Part II of these Regulations;
- (b) an employee given responsibility for fire safety matters in the workplace in question by such an employer;
- (c) a person who has, by virtue of regulation 3(2), obligations in respect of the workplace in question under Part II of these Regulations; and
- (d) any person who is an employee or agent of such a person as is referred to in subparagraph (c).

(6) In sections 24 and 33(1) of the Fire Services Act 1947 (which authorise the appointment of inspectors and the holding of inquiries for obtaining information as to the performance by fire authorities of their functions under that Act) the references to that Act shall be read as including references to these Regulations.

(7) Nothing in this regulation shall be taken to authorise a fire authority in Scotland to institute proceedings for any offence.

Serious cases: offence

11.—(1) A person shall be guilty of an offence if—

- (a) being under a requirement to do so, he fails to comply with any provision of the workplace fire precautions legislation;
- (b) that failure places one or more employees at serious risk in case of fire; and
- (c) that failure is intentional or is due to his being reckless as to whether he complies or not, and for this purpose “at serious risk” means being subject to a risk of death or serious injury which is likely to materialise.

(2) Any person guilty of an offence under this regulation shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both.

(3) A person is not guilty of an offence under this regulation in respect of any failure to comply with the workplace fire precautions legislation which is the subject of an enforcement notice.

Serious cases: prohibition notices

12.—(1) Sections 10 to 10B of the 1971 Act⁽²⁾ (special procedure in case of serious risk: prohibition notices) shall apply to—

- (a) tents and other movable structures; and
- (b) places of work in the open air,

which are relevant workplaces.

(2) Section 10 was substituted, and sections 10A and 10B inserted, by section 9 of the Fire Safety and Safety of Places of Sport Act 1987.

(2) For the purposes of paragraph (1), a relevant workplace is a workplace other than an excepted workplace.

Serious cases: enforcement notices

13.—(1) Where a fire authority are of the opinion that—

- (a) a person, being under an obligation to do so, has failed to comply with any provision of the workplace fire precautions legislation in respect of a workplace, or employees who work in a workplace, situated in the area for which they perform the functions of fire authority; and
- (b) the failure places one or more employees at serious risk (within the meaning of regulation 11(1)) in the case of fire,

the authority may serve on that person a notice (in these Regulations referred to as “an enforcement notice”) which—

- (i) states that they are of that opinion and why;
- (ii) specifies what steps they consider are necessary to remedy that failure;
- (iii) requires that person to take steps to remedy the failure within such period from the date of service of the notice (not being less than 21 days) as may be specified in the notice; and
- (iv) explains how, where, within what period and on what grounds an appeal may be brought against the enforcement notice and that the bringing of the appeal does not have the effect of suspending the operation of the notice, unless, on application, the court so directs.

(2) Where a fire authority are of the opinion that a person’s failure to comply with the workplace fire precautions legislation also extends to a workplace, or employees who work in a workplace, situated outside the area for which they perform the functions of fire 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 authority shall consult the fire authority for the area in which the workplace is situated.

(3) Unless the risk to employees in case of fire is so serious that the service of an enforcement notice cannot be delayed, a fire authority shall, before serving an enforcement notice on a person—

- (a) give him a written notice of intent stating—
 - (i) that the authority are proposing to serve the enforcement notice and the reasons why they are proposing to serve it;
 - (ii) what steps they consider are necessary to remedy his failure to comply with the workplace fire precautions legislation;
 - (iii) (where the authority propose to serve an enforcement notice which requires any alteration to a building) whether the authority have consulted or are consulting any person under paragraph (5) and, if so, the identity of that person and the reason for the consultation; and
 - (iv) that he may, within a period specified in the notice of intent, make written representations to the authority or, if he so requests, make oral representations to a person nominated by the authority;
- (b) afford him an opportunity to make representations in accordance with the notice of intent (where he so requests making and giving effect to arrangements for him to make oral representations); and
- (c) consider any representations which are duly made and not withdrawn.

(4) Where, having considered any representations made by a person under paragraph (3), the authority decide to serve an enforcement notice on him, they shall give him a written statement

of the reasons for their decision (which may be provided as part of the enforcement notice or as a separate document).

(5) Before serving an enforcement notice which would oblige a person to make an alteration to a building, the fire authority shall consult—

- (a) such persons as they would have been required to consult under section 17 of the 1971 Act (duty of fire authorities to consult other authorities before requiring alterations to buildings) if the proposed enforcement notice had been an improvement notice proposed to be issued under section 9D of that Act(3); and
- (b) any other person whose consent to the alteration would be required by or under any enactment.

(6) Where an enforcement notice has been served—

- (a) the fire 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 fire authority may extend or further extend the period specified in the notice.

(7) Where a fire authority are of the opinion that the risk to employees in case of fire is so serious that the service of an enforcement notice on a person cannot be delayed and accordingly do not serve a written notice of intent on him under paragraph (3), they shall, as soon as practicable, give to him a written statement of their reasons for being of that opinion (which may be provided as part of the enforcement notice or as a separate document).

(8) Without prejudice to the power of the court to cancel or modify an enforcement notice under regulation 14, no failure on the part of a fire authority to—

- (a) issue a written notice of intent or receive or consider representations under paragraph (3);
- (b) give reasons under paragraph (4) or (7);
- (c) consult under paragraph (2) or (5); or
- (d) give a written opinion under regulation 10(3),

shall make an enforcement notice void.

Enforcement notices: rights of appeal

14.—(1) A person on whom an enforcement notice is served may, within 21 days from the day on which the enforcement notice is served, appeal to the court.

(2) Subject to paragraph (3), on an appeal under this regulation the court may either cancel or affirm the enforcement notice, and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(3) Where a fire authority have served an enforcement notice on a person without having first given him an opportunity to make representations under regulation 13(3), the court shall cancel the enforcement notice if it is of the view that—

- (a) no reasonable fire authority could have concluded that the risk to employees in case of fire was so serious that the issuing of an enforcement notice could not be delayed; and
- (b) the person on whom the notice has been served has been materially prejudiced by the failure to afford him the opportunity to make representations.

(3) Section 9D of the 1971 Act was introduced, and section 17 of that Act was amended, by section 7 of the Fire Safety and Safety of Places of Sport Act 1987; section 17 was also amended by the Health and Safety at Work etc. Act 1974, section 78.

(4) Where an appeal is brought under this regulation against an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice unless, on the application of the appellant, the court so directs (and then only from the giving of the direction).

(5) In this regulation “the court” means—

(a) in England and Wales, a magistrates' court acting for the petty sessions area in which any relevant workplace is situated; and

(b) in Scotland, the sheriff within whose jurisdiction any relevant workplace is situated, and for this purpose a “relevant workplace” is a workplace in respect of which the enforcement notice was served, other than a workplace covered by the notice by virtue of regulation 13(2).

(6) An appeal to the sheriff under this regulation shall be by summary application.

Enforcement notices: offence

15.—(1) It is an offence for a person to contravene any requirement imposed by an enforcement notice.

(2) Any person guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both.

(3) In any proceedings for an offence under this regulation it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Enforcement orders

16.—(1) Where—

(a) it appears to a fire authority that a person has failed to comply with any requirement imposed on him by the workplace fire precautions legislation in respect of a workplace, or employees who work in a workplace, situated in the area for which they perform the functions of fire authority; and

(b) the court is satisfied, on the application of the fire authority, that that person is obliged to take any action in order to comply with the requirement, either in respect of such a workplace or such a workplace and other workplaces,

the court may, subject to paragraph (7), order that person to take that action.

(2) Before making an application to the court under this regulation, a fire authority shall—

(a) give the person against whom they are proposing to proceed a written notice of intent stating—

(i) that the authority are proposing to make the application and the reasons why they are proposing to do so;

(ii) what steps they consider are necessary to remedy his failure to comply with the workplace fire precautions legislation;

(iii) (where the authority propose to seek an enforcement order which requires any alteration to a building) whether the authority have consulted or are consulting any person under paragraph (5) and, if so, the identity of that person and the reason for the consultation; and

- (iv) that he may, within a period specified in the notice of intent, make written representations to the authority or, if he so requests, make oral representations to a person nominated by the authority;
 - (b) afford that person an opportunity to make representations in accordance with the notice of intent (where he so requests making and giving effect to arrangements for him to make oral representations); and
 - (c) consider any representations which are duly made and not withdrawn.
- (3) Where, having considered any representations made under paragraph (2), the authority decide to apply for an enforcement order against a person, they shall give him a written statement of the reasons for their decision.
- (4) Where a fire authority have served a written notice of intent under regulation 13(3) and have received representations made in response to that notice by the person concerned but consider, in the light of those representations or for any other reason, that it is appropriate to proceed by way of an application for an enforcement order rather than by way of an enforcement notice, the authority need not serve a written notice of intent under paragraph (2).
- (5) Before making any application to the court for an enforcement order which would oblige a person to make an alteration to a building, the fire authority shall consult—
- (a) such persons as they would have been required to consult under section 17 of the 1971 Act (duty of fire authorities to consult other authorities before requiring alterations to buildings) if, instead of intending to apply for an enforcement order, they had been proposing to issue an improvement notice under section 9D of that Act; and
 - (b) any other person whose consent to the alteration would be required by or under any enactment.
- (6) No failure on the part of a fire authority to—
- (a) issue a written notice of intent or receive or consider representations under paragraph (2);
 - (b) give reasons under paragraph (3);
 - (c) consult under paragraph (5); or
 - (d) give a written opinion under regulation 10(3),
- shall make an application under this regulation void.
- (7) Where a fire authority have made an application to the court under this regulation without having first given the person proceeded against an opportunity to make representations, either under paragraph (2) or regulation 13(3), the court shall reject the application if it is of the view that that person has been materially prejudiced by the failure.
- (8) In this regulation “the court” means:
- (a) in England and Wales, a county court; and
 - (b) in Scotland, the sheriff.
- (9) An application to the sheriff under this regulation shall be by summary application.