

Fire Safety Policy Directive ENFORCEMENT POLICY STATEMENT

Index

- 1. Introduction**
- 2. Advice and Guidance**
- 3. The Purpose and Method of Enforcement**
- 4. The Principles of Enforcement**
- 5. Audit and Inspection of Premises**
- 6. The Use of Formal Action**
- 7. Decisions on Enforcement Action**
- 8. Enforcement Options**
- 9. Public Interest Factors**
- 10. Human Rights and Other Statutory Compliance**
- 11. Publicity**
- 12. Actions by the Courts**
- 13. Further Information**

Fire Safety Policy Directive

ENFORCEMENT POLICY STATEMENT

1. Introduction

1.1 The principal aim of Essex Fire Authority is to make Essex a safer place by reducing as far as possible the risks and social and economic costs of fires and other dangers, without imposing unnecessary burden. Securing compliance with legal regulatory requirements is an important part of achieving this aim.

1.2 Essex County Fire and Rescue Service enforce general fire safety legislation on behalf of Essex Fire Authority within Essex. The legislation the Authority enforces includes:

- The Regulatory Reform (Fire Safety) Order 2005;
- The Fire Precautions (Sub-surface Railway Stations) Regulations 1989;
- The Manufacture and Storage of Explosives Regulations 2005
- Health and Safety at Work Etc. Act 1974;
- The Dangerous Substances and Explosive Atmospheres Regulations 2002
- (DSEAR);
- The Construction (Design and Management) Regulations 2007.

1.3 This Enforcement Policy Statement is based on the principles of Better Regulation contained in the Enforcement Concordat and Regulators Compliance Code and sets out the approach the Authority will take in enforcing the legislation. It will be used in conjunction with guidance issued by Parliament; Communities and Local Government; the Department for Business Enterprise and Regulatory Reform, other relevant government departments and agencies; and the Local Better Regulation Office.

1.4 Compliance with fire safety legislation will be achieved through education; by providing advice and guidance; and by formal enforcement action. Securing compliance with statutory requirements and proportionate use of enforcement powers, including prosecution, is an important part of this enforcement policy.

1.5 The Authority will ensure that all relevant officers are adequately skilled and are trained in the use of this policy. The Authority will seek to work with other enforcing authorities to ensure collaborative regulation and sharing of information.

2. Advice and Guidance

2.1 The Authority regards prevention as better than cure. The Authority will aim to secure compliance, avoiding bureaucracy or imposing excessive cost and will seek to work with the regulated entity to support and encourage economic progress, by offering information and advice to those we regulate. Individuals, businesses and other undertakings are encouraged to put safety first and to integrate fire prevention and fire protection requirements into normal working methods.

2.2 In accordance with its duties under section 6 of the Fire and Rescue Services Act 2004 the Authority will, to the extent that it considers it reasonable to do so, make arrangements for:

(a) The provision of information, publicity and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire;

(b) The provision of advice, on request, about:

- (i)** how to prevent fires and restrict their spread in buildings and other property;
- (ii)** the means of escape from buildings and other property in case of fire.

2.3 In exercising its duty to provide advice and information, the Authority will not:

- Undertake fire risk assessments for regulated persons;
- Appear in court on behalf of regulated persons in any prosecution brought by a third party including another enforcing authority, under health and safety or fire safety legislation, except as an expert or neutral witness to give general mitigating evidence;
- Draft fire safety policy and procedures on behalf of regulated persons. It is incumbent upon regulated persons to comply with fire safety legislation;

Other than in those circumstances, which appear to the Authority to be in the public interest and appropriate to the functions of a best value authority, act as a consultant on fire safety related issues other than as required to meet statutory consultation requirements imposed on other bodies and persons.

2.4 The Authority's officers will seek to provide advice that is appropriate to the premises and their use and will do so by reference to nationally recognised guidance and standards that regulated entities have assisted in developing.

2.5 Where use of national guidance is not appropriate in the circumstances of the case, local guidance will be used.

2.6 Comments from regulated entities on style, format and content will be welcomed to assist in the review of guidance used; and to assist in the further development of any guidance that the Authority may produce from time to time.

2. Advice and Guidance Continued

2.7 Where a regulated entity seeks advice or guidance from the Authority or its officers about actions needed to correct fire safety deficiencies or otherwise secure compliance with the law this will not automatically lead to formal enforcement action by the Authority. Should enforcement action prove to be necessary in the circumstances of the case it will be based on the principles, expectations and methodology of the Enforcement management Model (EMM) produced by the Health and Safety Executive (HSE), which is considered national best practice.

2.8 The Authority would prefer to advise and guide than serve notices or prosecute, but it must reserve the right to act in the public interest according to the circumstances of the case.

3. The Purpose and Method of Enforcement

3.1 The purpose of the Authority's enforcement function is to ensure that preventative remedial action is taken to protect relevant persons and to secure compliance with the regulatory system. The need for enforcement may stem from a lack of knowledge or a deliberate or negligent act. The term enforcement has a wide meaning and applies to all dealings between the Authority and those on whom the law places a duty.

3.2 The purpose of enforcement is to:

- Promote and achieve sustained compliance with the law;
- Ensure that the person responsible for premises subject to fire safety regulation takes action to deal immediately with serious risks to the safety of relevant persons.
- Ensure those individuals, businesses and other undertakings that breach fire safety requirements are held to account, which may include bringing alleged offenders before the courts.

3.3 Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims might be pursued, nor is it taken to assist such claims.

3.4 The Authority has a wide range of interventions at its disposal to secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer individuals, businesses and other undertakings information and advice either in person, in writing by letter or email, or over the telephone. This may include a warning that, in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may provide a notification of deficiencies report or serve an enforcement/improvement notice; prohibit or restrict the use of premises; or they may prosecute.

3.5 Enforcement or improvement notices, prohibition notices, and prosecutions are important ways to bring individuals, businesses and other undertakings to account for alleged breaches of the law. Where it is appropriate to do so and in accordance with this policy the Authority will use one or more of these measures to secure compliance with fire safety law.

3. The Purpose and Method of Enforcement continued

3.6 Investigating the circumstances encountered during audits or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, the Authority will have regard to the principles of enforcement set out in this statement and the objectives published in the Integrated Risk Management Plan.

3.7 The Authority will use discretion in deciding when to investigate or what enforcement action may be appropriate. The Authority will set down in writing the decision-making process which officers will follow when deciding on enforcement action and make this publicly available. Officers will utilise this policy when determining enforcement action. Such judgements will be made in accordance with the following Better Regulation principles which are in accordance with the Enforcement Concordat and the Regulators Compliance Code.

4. The Principles of Enforcement

4.1 The Authority believes in firm but fair enforcement of fire safety law. This should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions.

4.2 Proportionality

Proportionality means relating enforcement action taken to the risk to public safety.

Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by the Authority to achieve compliance or bring individuals, businesses or other undertakings to account for non-compliance should be proportionate to any risks to public safety, or to the seriousness of any breach, which includes any actual or potential harm arising from the breach of the law.

In determining the appropriate action to take, the Authority will seek to ensure that consideration is given to the costs, effectiveness and perceptions of fairness of regulation and that these considerations are appropriately balanced against public safety so that so far as is reasonably practicable the costs of actions taken are proportionate to the benefits expected from them.

4.3 Targeting

Targeting means ensuring that regulatory effort is directed primarily towards those whose activities give rise to higher levels of risk to public/employee (relevant persons), safety where the hazards and risks are less well controlled, or against deliberate offences.

The Authority aims to make sure, through targeting, that the direction of regulatory effort takes into account the level of risk. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it. The Authority has systems for prioritising regulatory effort. These include a risk-based re-inspection programme and localised plans to identify high risk premises. Risk assessment, utilising methodology and data provided by Communities and Local Government, together with local data, intelligence and knowledge, underpins the Authority's approach to regulatory activity.

The Authority will seek to identify relevant and good quality data to continually improve its risk based audit and inspection programme.

4. The Principles of Enforcement continued.

4.4 Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Persons with responsibilities under fire safety law managing similar risks can expect a consistent approach from the Authority in the advice tendered; the use of enforcement powers; decisions on whether to prosecute; and in the response to incidents and complaints.

The Authority has arrangements in place to promote consistency in the exercise of discretion, including arrangements for liaison with other enforcing authorities and will seek to continually improve through internal review, audit and consideration of comments received.

4.5 Transparency

Transparency means helping individuals, businesses and other undertakings to understand what is expected of them and what they should expect from the Authority.

It also means making clear to businesses, other undertakings and individuals not only what they have to do, where this is relevant, but also what is not expected of them. This involves distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

This statement sets out the general policy framework within which the Authority should operate. Businesses, other undertakings and individuals also need to know what to expect when an officer calls and what rights of complaint are open to them.

The following can be expected when an officer is dealing with you:

When officers offer Individuals, businesses or other undertakings, information or advice, either face to face or in writing, including any warning, they will explain what needs to be done to comply with the law and explain why; Officers will, if asked, write to confirm any advice and to distinguish legal requirements from best practice advice;

Unless urgent action is necessary, an opportunity to discuss what is required to comply with the law will be offered before formal enforcement action is taken;

A written explanation will be given of any rights of appeal against formal enforcement action at the time the action is taken;

Where examples of good practice are identified, officers will aim to provide positive feedback to encourage and reinforce these good practices and may share them with others as examples of good practice.

4.6 Accountability

Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards against which they can be judged (such as those outlined in this Policy Statement and the Authority's Equalities policy), and an effective and easily accessible mechanism for dealing with comments and handling complaints.

The Authority's "Compliments and Complaints procedure" is explained fully in the service complaints procedures advice leaflet which is available on request. Having a published and publicised procedure helps demonstrate to the public that the Authority takes their comments seriously. These comments can help highlight potential problems and help the Authority to build on the things that it does well.

5. Audit and Inspection of Premises

5.1 The Authority operates a risk-based system of audit and inspection of premises. This system utilises data and guidance from Communities and Local Government together with local intelligence and knowledge and incorporates local risk priorities identified from trends in location, types of fire and assessment of vulnerability of groups in local areas within Essex. From time to time, and particularly if any significant changes are proposed, the Authority will consult regulated entities on its methodology through consultation on its Integrated Risk Management Plan or by other means.

5.2 Audits and inspection will be undertaken by officers on the basis of the Authority's risk based system under which priority will be given to individual premises and generic premises types or uses that have been assessed as being of relatively higher risk. The greatest audit and inspection effort will be allocated to premises where a compliance breach would pose a serious risk to the safety of relevant persons and the Authority has reason to believe that there is a high likelihood of noncompliance with the law.

5.3 The Authority's overall enforcement programme will take account of the need to sample small numbers of premises in relatively lower risk categories in order to continually test the methodology used. The Authority will respond to allegations of fire risk in any premises for which they are the enforcing authority regardless of the relative risk level of the premises.

5.4 The Authority has entered into a number of agreements with other enforcing authorities to provide clarification about which authority takes the lead for particular premises types where the enforcement regimes overlap. To minimise audit and inspection burdens for regulated entities the Authority will continue to seek to develop, engage in, and foster partnerships working with other enforcers and other stakeholder groups particularly through Local Strategic Partnerships which will encourage joint working relationships.

5.5 The Authority will continue to work with other enforcing authorities, regulated entities and others in order to avoid duplication of collection of information from regulated entities and to seek and implement ways of:

- Varying data requests according to risk;
- Limiting collection to specific regulated entities sectors/sub-sectors;
- Reducing the frequency of data collection;
- Obtaining data from other sources;
- Allowing electronic submission;
- Requesting only data which is justified by risk assessment; and
- Sharing data with other authorities.

5.6 When determining data that may be required from regulated entities the Authority will consider the costs and benefits of such requests to regulated entities in order to avoid, so far as is reasonably practicable, requesting data that is not required to demonstrate compliance with the law or the person who is responsible under the law.

6. The Use of Formal Action

6.1 Before formal enforcement action is taken officers will provide an opportunity to those responsible for complying to make representations and, where possible, to resolve points of difference, save where the situation is so serious that immediate action is necessary. Where immediate action is taken to prohibit or restrict the use of a premises this will be explained in writing to the relevant party/parties normally within 24 hours. Where rights of appeal exist against formal action the Authority will clearly state this, with advice on the appeal process.

7. Decisions on Enforcement Action

7.1 The Authority seeks to ensure that legislation is enforced in an impartial way through policy and management procedures and safeguards.

7.2 Some decisions about enforcement action are taken by the officers who inspect the premises and in consultation with more senior colleagues if appropriate. Particularly serious action, such as prohibition or restriction of the use of premises or part of the premises, can only be authorised by identified senior officers. The decision to prosecute is taken by the Senior Fire Safety Manager following consultation with the Service Legislative Manager if appropriate.

7.3 Officers will be fair, independent and objective when considering enforcement action and will not let their personal views cloud their judgement.

7.4 The Authority will ensure that the correct individual and/or company is prosecuted for the correct offence/s.

7.5 The Authority is a Public Authority for the purposes of the Human Rights Act 1998; it will apply the principles of the European Convention on Human Rights in accordance with the Act, as it does in all of its enforcement activity.

8. Enforcement Options

8.1 The Authority's policy on determining the level of enforcement action to take utilises nationally recognised risk assessment based methodology. In deciding what action to take to ensure compliance with the law, the Authority considers the following:

- The nature and seriousness of any alleged offence/s;
- The risk of death or serious injury;
- Previous experience and record of compliance of the responsible person;
- Action taken to prevent any recurrence;
- The likely effectiveness of the various enforcement options;
- Any explanation offered and the circumstances and attitude of the responsible person;
- Any statutory defence available.

8.2 The Authority will always seek to use enforcement action that is proportionate primarily to the circumstances of the offence and the risk to life, but in so doing will also consider other factors such as the size of the business or undertaking and the nature of its activities.

8. Enforcement Options continued

8.3 Choices of enforcement approach available to the Authority are:

- Educate and inform;
- Statutory notice identifying the nature of the corrective action needed;
- Prohibition /restriction of use;
- Referral to other agencies;
- Prosecution through the Criminal Justice System

8.4 The Authority will keep its regulatory activities under review through management of its fire safety enforcement function. This will ensure, so far as reasonably practicable, that all actions are proportionate and impose the minimum burden necessary to secure reasonable compliance with the law.

8.5 Educate and inform

When a breach of the law is found, a verbal or written warning may be given. Officers may also give advice on how to comply with the law. Where advice is not mandatory this will be made clear.

8.6 Advice

Where a fire risk assessment or fire safety audit identifies a need for improvements to a premises the responsible person will often benefit from advice prior to implementing the necessary works. Inspectors may provide advice to assist the responsible person in planning and prioritising remedial action thereby ensuring best value and maximum benefit is achieved.

8.7 Enforcement, Improvement and similar notices

Regulatory notices calling for corrective action would generally be used where there is a clear breach of the law; where the degree of risk or harm from the situation is significant; and where a remedy needs to be identified and secured within a set period of time. Notices specify the problem and will either require a remedy as determined by officers or (if the legislation allows) may allow for other action with an equivalent remedial effect. In most cases there is a right of appeal against a notice.

Where there is a right of appeal, advice on the appeal mechanism will be set out in writing to the person on whom the notice is served.

Where a notice requires changes to a premises in which another enforcing body has a statutory interest, the Authority will, so far as is reasonably practicable, consult with such bodies as can reasonably be identified before serving the notice. Any such consultation will not release the person on whom the notice is served from their statutory obligation to consult relevant bodies in respect of works they will undertake as a result of a notice. Any failure by the Authority to consult with any particular body or person will not invalidate any notice served under the Regulatory Reform (Fire Safety) Order 2005.

8. Enforcement Options continued

8.8 Prohibition/Restriction notices

The Authority has powers under Article 31 of the Regulatory Reform (Fire Safety) Order 2005 and Sections 21 and 22 of the Health and Safety at Work etc. Act 1974 to prohibit the use of the whole or part of premises or to restrict the use of premises.

Such action will be considered where conditions are found that constitute a serious risk to life or injury to persons in the event of fire. Where immediate action is necessary an explanation of why such action is required will be given at the time and confirmed in writing. Where there are rights of appeal these will be clearly set out in writing at the time the action is taken.

8.9 Referral to other agencies

Where other Health and Safety enforcing authorities have a regulatory interest in a particular premises details will be forwarded to the appropriate agency, for example if apparently dangerous conditions or practices (not related to fire) are noted in a workplace.

8.10 Prosecution

The Authority will use discretion in deciding whether to bring a prosecution.

The decision to prosecute is a serious step. Fair and effective prosecution forms a legitimate element of the Authority's strategy to reduce the risk of death and injury in the workplace by enforcing fire safety law. Any prosecution has serious implications for all involved – including the person prosecuted, casualties, witnesses and Authority personnel. The Authority will apply the guidance set out below so that it can make fair and consistent decisions about prosecutions.

Criminal proceedings will be taken against those persons responsible for the offence.

Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, the Authority will also consider any part played in the offence by the officers of the Company: including Directors, Managers and the Company Secretary. Action may also be considered against staff, contractors or any other person (as well as or instead of the Company) where it can be shown that the offence was attributable to neglect or other failings or actions on their part.

The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless the Authority finds there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

When in the course of an investigation the Authority has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with the Code for Crown Prosecutors that it is in the public interest then that prosecution will go ahead. Where the circumstances warrant it and the evidence to support a case is available, the Authority may prosecute without warning or recourse to alternative sanctions.

9. Public Interest Factors

9.1 The Authority will consider the following factors in deciding whether or not to prosecute:

- The nature and seriousness of any alleged offence/s;
- The risk of death or serious injury;
- Previous experience and record of compliance of the responsible person;
- Action taken to prevent any recurrence;
- The likely effectiveness of the various enforcement options;
- Any explanation offered and the circumstances and attitude of the responsible person;
- Any statutory defence available.

9.2 These factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors for and against prosecution. Each applicable factor must be considered and given appropriate weight according to the circumstances of the case. The Authority will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

9.3 Where there is sufficient evidence, the Authority will normally consider prosecution in any of the following circumstances:

- Breaches of legislation that placed people at risk of death or serious injury;
- Persistent breaches of statutory requirements in relation to the same undertaking;
- Failure to comply with formal remedial requirements, such as the requirements of an enforcement notice. It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply;
- Reckless disregard for fire safety requirements. It is in the interests of all that irresponsible operations are brought into compliance;
- Failure to supply information without reasonable excuse or knowingly or recklessly
- Supplying false or misleading information. It is essential that lawful requests for information by the Authority or its Officers are complied with and that accurate information is always supplied to enable informed regulation to be exercised;
- Obstruction of Officers in carrying out their powers. The Authority regards the obstruction of, or assaults on, its Officers while lawfully carrying out their duties as a serious matter.

10. Human Rights and Other Statutory Compliance

10.1 All enforcement policy development and enforcement action will be carried out in a manner which complies with the Human Rights Act 1998 and the requirements of other legislation. Officers will also comply with all relevant codes of practice, unless a code is not mandatory and there are good reasons which justify non-compliance.

11. Publicity

11.1 The Authority will consider publicising any conviction, which could serve to draw attention to the need to comply with fire safety requirements, or deter anyone tempted to disregard their duties under fire safety law. Details of statutory notices served will be held on publicly available registers in accordance with the Environment and Safety Information Act 1988.

12. Actions by the Courts

12.1 In cases of sufficient gravity, for example (but not exclusively) where serious injury or ill health has resulted, consideration will be given to requesting the Magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 8.1 are used, but consideration is also given to the sentencing powers of the Magistrates' Court.

12.2 Penalties.

The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Authority will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers.

The Authority will always seek to recover the costs of investigation and court proceedings.

13. Further Information

Further information about the Authority's enforcement of fire safety regulation can be obtained from the following sources:

- The Authority Compliments and Complaints Leaflet;
- IRMP;
- Regulators Compliance Code;
- Enforcement Concordat;
- Code for Crown Prosecutors.