

# HEREFORD & WORCESTER FIRE AND RESCUE SERVICE

## GUIDANCE NOTE - FIRE SAFETY AUDIT PROCESS

Fire Safety audits are carried out following nationally agreed guidelines so that any advice given to you is consistent and proportionate to the fire risk in your premises and to keep people safe.

We believe that prevention is better than cure and our Inspectors will actively work with you to advise and assist with meeting the standard required.

Our Inspectors carry out audits in a fair and open manner in accordance with the Hereford & Worcester Fire and Rescue Service Enforcement Policy Statement. *(Currently under review)*

All Fire Safety Inspectors are issued with an Authorisation Card (Service Identification Card) which will be shown to you on request. This gives the Inspector certain powers, which are summarised along with the legislation concerned in the following notes.

## INSPECTION AND ENFORCEMENT PROCEDURES

This guidance note has been provided to ensure that you are aware of the Inspector's powers, and to explain any actions the Fire and Rescue Authority (the Authority) **may** take to ensure people are safe in the event of fire. The Inspector will explain the reason for the inspection and what you will be required to provide during the visit.

The Responsible Person has a duty to ensure the health and safety of any employees and others who could be affected by a fire involving the premises. The purpose of a fire safety audit is to review the adequacy of the existing fire safety arrangements and to ensure that the responsible person is effectively meeting the duties required of them under the Regulatory Reform (Fire Safety) Order 2005 (the Order), therefore keeping people safe.

## SUMMARY OF POWERS

An Inspector appointed by the Hereford & Worcester Fire and Rescue Service and in possession of written warrant (Service Identification Card), has powers under the following legislation:-

- i) Regulatory Reform (Fire Safety) Order 2005
- ii) Health and Safety at Work etc Act 1974 (HASWA) Sections 19, 20, 21, 23 and 25 of the Construction (Health, Safety and Welfare) Regulations made under HASWA
- iii) Regulations made under the above Acts

An Inspector may do anything necessary for the purpose of carrying this Order into effect and in particular, shall have the power to do, at any reasonable time, the following :-

- a) to enter any premises and to inspect the whole or part of the premises and anything in them;
- b) to make such enquiry as may be necessary to ascertain whether the provisions of this Order have been complied with and to identify the responsible person in relation to the premises;

- c) to require the production of any records, and to take copies of any entry in the records, which are required under any provision of the Order or for the purposes of examination;
- d) to require any person to give such facilities and assistance to enable the Inspector to exercise the powers conferred by the Order;
- e) to take samples of any articles or substances found on the premises for the purposes of ascertaining their fire resistance or flammability; and
- f) in the case of any article or substance, to cause it to be dismantled or subjected to any process or test.

## **ENFORCING THE LAW**

When an unsafe situation is identified indicating a failure to meet the requirements of fire safety legislation is found, the Inspector will decide what action to take. The action will depend on the nature of the failure and will be based on the principles set out in the Authority's Enforcement Policy.

Hereford & Worcester Fire and Rescue Service may take enforcement action where there is an identified failure to comply with the legislation. This will take the form of one of the following:

## **FIRE SAFETY MATTERS – ACTION REQUIRED**

Where it is identified that you have failed to comply with any requirements imposed on you by the Order but the breach is considered not to warrant service of an Enforcement Notice, then a fire safety matters – action required letter will be served on you by the Inspector. The letter will identify the deficiencies, the action(s) required to complete the work(s) and a reasonable timescale for completion.

## **ENFORCEMENT NOTICE**

Where it is identified that you have failed to comply with any requirements imposed on you by the Order, and those breaches are of a serious nature, you may be served with an Enforcement Notice.

Attached to the Notice will be a schedule specifying the matters that, in the opinion of the Authority, constitute failure(s) to comply with the Order.

The schedule will also identify the action required to comply and a reasonable timescale for completion.

Unless the actions identified in the schedule to the Notice are taken by the specified date, it will be considered that you have not complied with the Notice and the Authority may consider a prosecution against you. You may however apply for an extension of time and any such application will be considered where there are reasonable grounds.

## **PROHIBITION NOTICE**

Where it is identified that there is a risk to people in the event of fire so serious that use of the premises ought to be prohibited or restricted, then a Prohibition Notice may be served. The Notice may prohibit or restrict use immediately, or after a specified time, until remedial action(s) has been taken.

## **ALTERATIONS NOTICE**

Where the Authority considers a premises would constitute a serious risk to people if a change is made to them, or the use to which they are put, it may serve on you, as the responsible person, an Alterations Notice.

Where an Alterations Notice has been served, you must notify the Fire & Rescue Service before making:

- a change to the premises;
- a change to the services, fittings or equipment in or on the premises;
- an increase in the quantities of dangerous substances which are in or on the premises;
- a change to the use of the premises which may result in a significant increase in risk,

## **NOTICE UNDER ARTICLE 37 (firefighters' switches for luminous tube signs)**

Where apparatus to which this article applies has been installed or an installation is proposed in or on the premises, the Authority may serve a Notice of Requirements, relating to the position, colour and marking of the cut-off switch, on the responsible person.

## **PROSECUTION**

The Authority will consider prosecution where for example, there is failure to comply with the fire safety duties imposed by the Order and that failure has put one or more relevant persons at risk of death or serious injury in the event of fire. In addition, if there has been a failure to comply with any requirements or restriction imposed by a notice issued under the Order, then again consideration will be given to prosecution.

## **PENALTIES**

Failure to comply with fire safety duties imposed by this Order, where this failure has put one or more persons at risk of death or serious injury, or with any requirement or restriction imposed by a notice issued under this Order, is a criminal offence under Article 32 of the Order. A person guilty of such an offence shall be liable –

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

Any person found guilty of an offence under any requirement imposed by Article 37 in respect of luminous tube signs is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## APPEALS

A person on whom an Alterations Notice, an Enforcement Notice, a Prohibition Notice or a Notice given by the Authority under Article 37 (Firefighter's Switches for Luminous Tube Signs) is served may, within 21 days from which the Notice is served, appeal to a magistrate's court.

## PUBLIC REGISTER

You should be aware that in order to satisfy the "Environment and Safety Information Act 1998" the Fire Authority is obliged to enter details of certain Notices called "relevant notices" (which will be identified by the Inspector serving the Notice), into a register which the public have access to. "Relevant notices" are those which impose requirements or conditions not solely for the protection of persons at work. Entries on the register will be kept for a period of at least three years.

Entries to the register will be made within 14 days of the expiry of the right of appeal or the disposal of an appeal against the content of a notice. If a notice is cancelled on appeal no entry will be made. Where an Inspector is satisfied that a notice has been complied with, withdrawn or amended, a further entry will be made in the register within 7 days to show this.

If you think that the entry for this notice would disclose commercially sensitive information you should give written notice to the Authority **within 14 days**. They in turn will draft an entry which is considered not to disclose the information and serve this on you. In the meantime the entry will specify only your name, address, the place involved and the relevant legal provisions. If you are not satisfied with the redrafted entry you have a further right of appeal to the Secretary of State **within 14 days**.

## PUBLIC AVAILABILITY OF INFORMATION

Under the Code of Practice on Access to Government Information, the Authority is committed to make available on written request, information about its actions and decisions, which includes information about notices it has issued. In general, the information that the Authority will make available about a notice is the information on the front page.

Information on a notice will not be made available until the right of appeal against the content of a notice has expired with no appeal having been lodged, or the appeal has been disposed of. Where an Inspector is satisfied that a notice has been complied with, the information will be made available at the same time as the information on the front page. If you think that the information in the notice would disclose commercially confidential information you should contact the Authority **within 14 days** who in turn will redraft the information in a way it believes will not reveal the confidential matter. In the meantime, the only information to be made available will be your name, address and place involved and the relevant legal provisions. If you are not satisfied with the redrafted information there is **no** further appeal. However, the Authority will make every reasonable effort to agree a form of words that is acceptable to you.

For the avoidance of doubt, where the publicising of a notice is appropriate to further the safety of persons, the details in the previous paragraph about making available information regarding a notice, will not apply. An example of circumstances where information may be given out directly the notice is served is where the notice prohibits the use of sleeping accommodation. Tenants, or other persons, who use this prohibited accommodation may be informed immediately by the Authority.

## **COMPLAINTS**

If you are unhappy with the way the inspection has been conducted, or wish to make a complaint concerning any aspect of an inspection, you should contact the Service. Details of how to make a complaint and our complaints procedure can be found on our website [www.hwfire.org.uk](http://www.hwfire.org.uk)

Client feedback – Following an inspection and on completion of any required actions, you may be asked to complete a client feedback form and return it to the Service in a pre-paid envelope. The purpose of this form is to allow the Service to review its procedures and ensure that the Fire Safety Order is complied with in all relevant premises in a fair and equitable manner for all responsible persons.

**YOUR RIGHTS AND THE FIRE SAFETY OFFICER'S POWERS, FOR THE PURPOSE OF THE INSPECTION OF YOUR PREMISES IN ACCORDANCE WITH:**

**PARAGRAPH 6.7 OF CODE B UNDER THE POLICE AND CRIMINAL EVIDENCE ACT 1984**

**POWER(S) UNDER WHICH THE INSPECTION IS MADE**

Under the powers provided by Article 27 of **The Regulatory Reform (Fire Safety) Order 2005** ("The Order") a Fire Safety Inspector ("An Inspector") may enter any premises which he has reason to believe it is necessary for him to enter for the purpose of carrying out this Order and any regulations made under it into effect 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.

An Inspector may make inquiries which may be necessary for any of the following purposes:-

- to ascertain, as regards the premises, whether the provisions of The Order or any regulations made under it apply, or have been complied with; and
- to identify the responsible person in relation to the premises;
- to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept by virtue of any provision of The Order or regulations made under it, or which it is necessary for him to see for the purposes of an examination or inspection under article 27, and to inspect any entry in, the records.

An Inspector may 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 Article 27 of The Order.

The powers conferred by Article 27 on a Fire Inspector are also exercisable by an Officer of the Fire and Rescue Service maintained by 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.

Some of the additional powers which an Officer may wish to exercise have been summarised, as far as practicable, attached to this Notice, together with a summary of your rights.

## **ADDITIONAL POWERS WHICH AN INSPECTOR/AUTHORISED OFFICER MAY EXERCISE IN CERTAIN CIRCUMSTANCES.**

### **Powers in respect of books, documents and other records**

Under The Regulatory Reform (Fire Safety) Order 2005, an Inspector may require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records –

- 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 Article 27 of The Order, and in addition to inspecting them, may take copies of the records, or any entry in them.

An Inspector may 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 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).

### **SUMMARY OF YOUR RIGHTS UNDER THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005**

An Inspector must, if so required when visiting any premises in the exercise of powers conferred by Article 27 of The Order, produce to the occupier of the premises some duly authenticated document showing evidence of his authority.

Where an Inspector proposes to exercise the power under Article 27(1)(f) of The Order, to cause any article or substance, which appears to him to have caused or to be likely to cause danger to the safety of relevant persons, to be dismantled or subjected to any process or tests (but not so as to damage or destroy it unless this is, in the circumstances, necessary) he must, if required by a person with responsibilities in relation to the premises and who is present at the time, cause anything to be done in the presence of that person. In addition, before causing the article or substance to be dismantled or subjected to any process or test, an Inspector/Authorised Officer 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 the power provided by Article 27(1)(f).

## **SUMMARY OF YOUR RIGHTS UNDER PACE**

Persons whose premises are inspected have certain rights under the Police & Criminal Evidence Act, Code of Practice "B", a copy of which is available for inspection at any Police Station and at the Headquarters of Hereford & Worcester Fire and Rescue Service at the address provided on our Service web pages – [www.hwfire.org.uk](http://www.hwfire.org.uk) (Using – 'Contact us' tab)

### **In summary:**

- 1            The inspection should take place only at a reasonable hour (normally meaning when open for business) and only after the Officer has told you the purpose of the inspection and shown his/her credentials, if requested.
- 2            Searches must be conducted with due consideration for the property and privacy of the occupier and with no more disturbance that necessary.
- 3            You may ask a friend, neighbour or other person to witness the inspection unless the Officer in Charge has reasonable grounds for believing that this would seriously hinder the investigation. A search will not be unreasonably delayed for this purpose.
- 4            No item may be seized which is the subject of "legal privilege", (i.e. communications with a legal advisor).
- 5            You are entitled to a list of description of seized items, on request, within a reasonable time.
- 6            Seized property will be retained no longer than is necessary, e.g. to test, photograph, produce in evidence, unless it is forfeited by court order.
- 7            Where practicable, you will be allowed supervised access to seized property to examine, photograph or copy it (or you will be provided with photographs/copies) at your expense.
- 8            You may be entitled to compensation for loss or damage caused in entering/ inspecting your premises or by seizing your property in certain circumstances. Apply to the address on page 1.