**REGULATORY REFORM (FIRE SAFETY) ORDER 2005 (AS AMENDED) & FIRE SAFETY (ENGLAND) REGULATIONS 2022:**

**ENFORCEMENT AND SANCTIONS FOR NON-COMPLIANCE**

1. **About this Guide**
	1. The purpose of this short Guide is to:
* explain how the Regulatory Reform (Fire Safety) Order 2005 (as amended) (“the FSO”) and the Fire Safety (England) Regulations 2022 (“the Regulations”) are enforced; and
* advise you of the sanctions that are available to Enforcing Authorities (“EAs”) if you fail to comply with this legislation.
	1. The Regulatory Reform (Fire Safety) Order 2005 applies to premises within England and Wales. The Fire Safety (England) Regulations 2022 apply to relevant premises within England only. Within this Guide, the Fire Safety Order and/or the Regulations are referred to as simply “the fire safety legislation”.

* 1. The Guide is intended for the Responsible Person (RP) and other persons having control of premises (as defined in the Fire Safety Order), on whom the fire safety legislation imposes duties. This includes those with any contractual or tenancy obligations for maintenance, safety and repair of the premises.
	2. The Guide is not intended to provide a detailed interpretation of the fire safety legislation. For the exact requirements imposed by the fire safety legislation, legal terminology and its definitions, reference should be made to the legislation itself or to supporting guidance available on the Government website. The Guide largely avoids the use of legal terminology, but provides guidance on how enforcement and sanctions work in practice.
1. **What the Law Requires**
	1. If you are not sure as to whether you or your organisation are RPs under the fire safety legislation, or you are not sure as to how to comply with the legislation, please refer to “A Short Guide for Persons with Duties under Fire Safety Legislation” ([www.xxxx](http://www.xxxx)).
	2. It is the responsibility of the RP and those they appoint to assist them to comply with the fire safety legislation. While EAs, such as the fire and rescue service, can give general advice, they cannot carry out the fire risk assessment for you, nor can they, therefore, give detailed advice on the specific fire precautions that are appropriate for your premises.
2. **How is the Legislation Enforced?**
	1. EAs are responsible for “policing” RP compliance with the fire safety legislation. For the vast majority of premises, the EA is the local fire and rescue authority. However, for some premises the EA may be another body; for example, in the case of a construction site that does not form part of an occupied building, the EA is the Health and Safety Executive.

* 1. EAs enforce the fire safety legislation by carrying out audits of premises. These involve discussion with the RP or appropriate representative(s) of the RP, examination of the fire risk assessment, examination of records (e.g. records of testing and maintenance of fire protection equipment) and an inspection of part, or all, of the premises.
	2. All EAs are expected to enforce the fire safety legislation in accordance with the principles of the “*Regulators’ Code*”, produced by the Office for Product Safety and Standards. This requires, for example, that enforcement is transparent and proportionate to risk, minimises the cost of compliance, and delivered for the purpose of promoting and encouraging compliance.
	3. If an EA determines that a RP has failed to comply with the fire safety legislation, it has a range of options available to enforce the fire safety legislation, including verbal advice, non-statutory and statutory notices. In addition to civil enforcement action, failure to comply with statutory duties under the FSO causing risk of death/ serious injury to arise, and/ or with any statutory notice/s issued by an EA can lead to prosecution and criminal sanctions. The sanctions are discussed in the next sections.
	4. It is the sole prerogative of EAs to determine the appropriate enforcement action in relation to breaches of the fire safety legislation.
	5. In determining the appropriate enforcement action, as well as consideration of risk caused by breaches, EAs may take into account factors such as:
* Previous breaches by the RP.
* Evidence of best endeavours to comply on the part of the RP.
* Whether breaches are inadvertent or an intentional attempt to save money.
* The general state of fire precautions in the building.
* The cooperation of the RP.
1. **Non-Statutory Verbal Advice**
	1. If the EA finds only a small number of minor breaches of the fire safety legislation, the inspecting officer might choose simply to give verbal advice, which will not then be followed up by further action (This action is sometimes described as “Educate and Inform”).
	2. For example, this approach might be adopted if it is clear that the RP is making best endeavours to comply with the fire safety legislation, but that, for example, while the RP has appropriate procedures for checking fire doors, say, two or three fire doors were not effectively self-closing on the day of the audit.
2. **Non-Statutory Notices**
	1. If there are more significant breaches but, nevertheless, these are unlikely to place occupants of the building at serious risk, a “*Notice of Fire Safety Deficiencies*” (“a NoD”) can be issued. (A NoD is sometimes described as a “*Letter of Fire Safety Matters*”.)
	2. A NoD will commonly incorporate a schedule, on which each Article of the Fire Safety Order (or each Regulation of the Fire Safety (England) Regulations) breached by the RP is listed, along with a description of the breach and a short description of an appropriate remedial action.
	3. Subject to compliance with the fire safety legislation, it is for the RP to determine the remedial action that they wish to take. The suggested remedial action in the schedule might be only one means of achieving compliance and does not preclude other means.
	4. A NoD has no statutory force, in that it is not recognised within the Fire Safety Order and so no offence is committed by failing to comply with a NoD. (However, other action may be taken in relation to the breaches themselves. For example, if they are not addressed, an Enforcement Notice may subsequently be issued-see below.) Non-compliance with a NoD can however be used as evidence in any subsequent prosecution and/or as an aggravating factor in sentencing.
	5. Issue of a NoD, as opposed to other enforcement actions described below, is consistent with the intent of the Regulators’ Code that enforcement should be proportionate to the risk arising from non-compliance and to encourage compliance with the fire safety legislation.
	6. The NoD is likely to specify a recommended timescale for completion of remedial action. It is the prerogative of the EA as to whether they choose to carry out a follow-up inspection on expiry of the timescale.
	7. Some (but not all) EAs may choose to agree an Action Plan with the RP, particularly if the breaches are numerous or are of a more serious nature. In this case, the RP may be asked to sign a non-statutory, non-enforceable prioritised plan, with recommended timescales, for remediation of breaches.
	8. The Action Plan will, again, refer to the specific legislative requirements that are breached, along with remedial actions agreed with the RP. A timescale is attached to these actions, after which a follow-up audit will be carried out by the EA.
	9. In the event that appropriate action is not taken by a RP in response to a non-statutory notice, the EA may subsequently wish to issue a statutory notice (see below), imposing an enforceable legal requirement for remedial action to be taken.
3. **Statutory Notices**

Alterations Notices

* 1. An Alterations Notice can be issued if, are considered to be high risk or could become so if alterations are made to the premises or their use.
	2. The effect of an Alterations Notice is that the RP must notify the EA of any proposed changes in relation to the premises that may result in a significant increase in risk to persons in the event of fire. The types of changes to which this applies are wide ranging. The EA will ensure that, through an explanation given in the notice, RPs can reasonably identify the type of change that the EA considers it necessary to be notified about.
	3. Alterations Notices are not very common; they are not applied generically to any particular type of premises or form of fire strategy, but are specific to the premises in question and its use. An Alterations Notice is appropriate where, for example, the safety of people is dependent on certain fire safety measures which have not been put in place, with the result that people are at serious risk of fire; or where although there is no such risk currently, changes (including changes in fixtures, services, fittings, dangerous substances or use of the premises) could result in a serious safety risk.
	4. This is particularly the case if, for example, the anticipated standard of management is such that these changes could be made without appreciation of their effect on fire safety and/or the changes would not be subject to control under other legislation, such as building regulations.
	5. An Alterations Notice may also contain additional requirements. For example, this could include a requirement that, before making changes, the RP sends a copy of the fire risk assessment to the EA, together with a summary of changes which will be made to fire precautions. Any such additional requirements are made at the discretion of the EA.
	6. The RP is not precluded from making the intended changes after the EA has been informed. However, the RP will normally wish to ensure that the proposed changes are acceptable to the EA before carrying out alterations that might subsequently prove to be unacceptable.

Enforcement Notices

* 1. An Enforcement Notice can be served where the EA is of the opinion that the RP has failed to comply with any requirement(s) of the FSO or any Regulations made under it.
	2. As in the case of a NoD, an Enforcement Notice specifies each Article or Regulation that has been breached, explains the nature of the breach and suggests the appropriate remedial measure(s), albeit not precluding other means of rectifying the breach(es). The notice can also provide the RP with a choice between different ways of rectifying a breach.
	3. In most cases, the RP will be a corporate body, such as a limited liability company, unless, for example, the employer in a workplace is a sole trader. Although, as a matter of practicality, the notice will often be sent to an officer of the company, such as the company secretary, this does not imply that the company secretary is the RP; they are merely the person who receives the notice on behalf of the RP.
	4. Where there are multiple RPs under the fire safety legislation, the EA may issue a separate Enforcement Notice to each RP. For example, in an office building, RPs might comprise the owner of the building, managing agents and each commercial tenant.
	5. The Enforcement Notice specifies the timescale within which remedial action must be taken by the RP(s); this period must be at least 28 days. Prior to expiry of the timescale, the RP can apply to the EA for an extension of time, but this is granted at the sole prerogative of the EA.
	6. If you receive an Enforcement Notice, it is extremely important that you study it carefully and ensure that it comes to the attention of the appropriate people within your company. This is because:
* if you wish to appeal to the court against the notice, or anything in the notice (see below), the appeal must be lodged with the court within 21 days of service of the notice (during which you may need to take legal advice or consult a fire safety expert); and
* failure to comply with any requirement in an Enforcement Notice within the timescale specified in the notice (or any extension of time granted by the EA) is a specific offence, separate from any other offences that might arise from the breaches specified in the notice.
	1. If an EA is of the opinion that any breach of the FSO or any Regulations made under it found at your premises might apply to other premises of your company in England or Wales, the EA may also issue an Enforcement Notice in relation to these other premises. For example, if it is found that a fast-food chain is failing to provide fire training for staff at one outlet because there is no policy to provide fire training within the company, the EA may issue notices requiring that staff be trained at all their premises in England and Wales.

Prohibition Notice

* 1. A Prohibition Notice is the most stringent measure that can be taken by an EA. The notice prohibits or restricts the use of the premises for which it is issued.
	2. Prohibition Notices are issued in cases where there is an urgent need to prohibit or restrict the use of premises to ensure the safety of people, who would, otherwise, be exposed to serious risk.
	3. The notice specifies the matters which, in the opinion of the EA, give rise to serious (and potentially imminent) risk. The prohibition or restriction applies until the specified matters have been remedied.
	4. Where practicable, EAs will normally include directions as to the measures which would need to be taken by the RP to eliminate the serious risk. EAs endeavour to ensure that such directions are understandable and capable of being acted upon.
	5. A Prohibition Notice normally takes immediate effect. However, at the prerogative of the EA the notice may, alternatively, not take effect until the risk of death or serious injury will occur. For example, if, outside normal business hours, a shopping centre is found to have some serious failure that would affect the adequacy of the means of escape for the number of people likely to be present during the opening hours of the shops, the Prohibition Notice might prohibit the shopping centre from opening on the following morning.
	6. Having issued a Prohibition Notice, the EA may withdraw the notice, or amend its effect, at any time, having been satisfied that measures have been taken to ensure that there is no longer serious risk to people from fire.
	7. Equally, the Prohibition Notice could remain in place indefinitely. For example, the dangerous circumstances might no longer exist, but the premises could be prohibited from use thereafter if, at any time, the same dangerous circumstances arise again. This is analogous to the situation in health and safety, in which, for example, use of a machine may be prohibited until a guard is fitted; the use of the machine may be prohibited thereafter at any time there is no guard fitted.
	8. A Prohibition Notice cannot be issued in respect of a single private house. However, a Prohibition Notice can be issued to prohibit or restrict the use of flats within a block of flats (e.g. if the common parts become inadequate as a means of escape from the block) and private dwellings within a house in multiple occupation, as these fall within the scope of the FSO and any regulations which fall under it.
	9. Similarly, where domestic premises are located above commercial premises, and use of the commercial premises places residents of the domestic premises at risk of death or serious injury in the event of fire within the commercial premises, a Prohibition Notice can be issued to prevent use of the commercial premises and/or the domestic premises.
	10. For example, this can arise when the only means of escape from the domestic premises are through the commercial premises. This has been known to occur when, for example, the only means of escape from staff sleeping accommodation above a restaurant or fast-food outlet are through the commercial premises.
1. **Appeals Against Statutory Notices**
	1. A person who has been served with an Alterations Notice, an Enforcement Notice or a Prohibition Notice may, within 21 days from the day on which the notice is served, lodge an appeal to a magistrates’ court.
	2. When subject to an appeal, the notice is suspended until the appeal is finally resolved by the court or withdrawn. The only exception to this is a Prohibition Notice. Prohibition Notices are not suspended unless the court directs otherwise.
	3. The court can either cancel or affirm any statutory notice and, if it affirms the notice, can do so either in its original form or with such modification as the court thinks fit.
	4. RPs may make a further appeal to a higher court against the decision of the magistrates (as can the EA).
2. **Prosecution Proceedings**
	1. If an EA considers that a breach of any requirement(s) of the FSO or any Regulations made under respect of fire precautions in their premises is so serious that people are exposed to the risk of death or serious injury in the event of fire, the EA may bring prosecution proceedings against the RP. The maximum penalty for any of these offences is an unlimited fine in a magistrates’ court or, at crown court, an unlimited fine and/or a term of imprisonment not exceeding two years.
	2. Failure to comply with a statutory notice (an Alterations Notice, an Enforcement Notice or a Prohibition Notice) is also an offence. It should be noted that these failures result in a criminal offence regardless of whether or not anyone is placed at risk. The maximum penalty for any of these offences is an unlimited fine in a magistrates’ court or, at crown court, an unlimited fine and/or a term of imprisonment not exceeding two years.
	3. A number of other offences can occur, such as falsifying records, giving false information to an inspector of an EA or obstructing an inspector, for which lesser penalties can be imposed.
3. **Who Can Be Prosecuted?**
	1. As previously discussed in this Guide, many offences under the fire safety legislation can be committed by companies, as opposed to individual people.
	2. However, it should be noted that there are circumstances in which individual people in an organisation or a professional context can be prosecuted under the fire safety legislation. This can occur under the following circumstances:
* the RP is a sole trader, and is the employer of people who work in the premises, or is self-employed with no employees (but, for example, members of the public have access to the premises);
* an offence has been committed by a company, and it can be proved that the offence was the result of neglect, consent or “turning a blind eye” to the offence by an officer of the company, against whom prosecution proceedings can also be taken;
* a manager of the company had responsibility (e.g. under their employment contract) for fire precautions, which were found to be so inadequate that people were placed at risk of death or serious injury in case of fire, or failed to carry out their responsibility to comply with a statutory notice;
* an employee has failed to take reasonable care for their safety, and/or the safety of other people, from fire, or has failed to cooperate with their employer (e.g. in ensuring fire safety, reporting serious and imminent fire hazards or reporting shortcomings in the fire precautions, which they should have recognised from their training). In this case, an offence is only committed if the failure on the part of the employee places people at risk of death or serious injury in the event of fire, and penalties do not include imprisonment.

**Defences**

* 1. If anyone (a company or a person) is charged with an offence under the fire safety legislation, it is a defence to prove that they took all reasonable precautions and exercised all due diligence to avoid the offence.
	2. However, this defence is not available if the RP is prosecuted for a failure to take such general fire precautions as to ensure the safety of their employees, or to have failed to eliminate or reduce the risk from a dangerous substance (e.g. flammable liquids, explosive materials or oxidising agents).
	3. Moreover, there is no defence for an employer on the basis that their employees failed to do something (unless the employer can show that everything had been done to prevent the failure).