

A COMPREHENSIVE GUIDE TO **FIRE** SAFETY

COLIN S. TODD



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To my three children, Keith, Jayne and Fiona.

And to Karen for loving me against all odds.

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Introduction

Each year, despite the constant efforts of central government, fire and rescue services, fire insurance companies, professional fire advisers and a plethora of other interested bodies, around 500 people die in fires in the United Kingdom, while around 15,000 people are injured by fires. The majority (about 75–80 per cent) of these fatal and non-fatal casualties occur in dwellings, rather than places of work. The reasons for this include the enhanced risk of injury if fire occurs when people are asleep, the absence of legislative control over general fire precautions in most private dwellings and the absence of very old people, who are, statistically, at greater risk from fire than young people, from places of work. Nevertheless, in 2004 for example, 55 people died and 1,500 were injured in fires in non-domestic buildings. In addition, and often more memorably, people other than employees are sometimes involved in very serious fire incidents as they shop, travel, engage in recreational activities or reside in care homes. The need for fire precautions is, therefore, easily established in most buildings.

Fire also results in serious economic losses. The most obvious of these is direct damage to property. It is estimated that, in 2004, the value of property damaged by fire was £1.3 billion.¹ While this includes uninsured damage to property for which the owner would have received no recompense, it excludes the indirect or consequential losses suffered by industry and commerce due to the loss of profits following a major fire. Although consequential loss (or ‘business interruption’) can be insured, the effects of a serious fire on the future revenue earning of a business can be difficult to quantify. It is often claimed that a significant number of companies cease trading within a few years of a major fire. Undoubtedly, a large fire can result in loss of confidence by customers, long-term loss of business and ultimately loss of jobs. The value of lost business as a result of fires in 2004 was estimated to be £43 million.

The management of fire risk and the engineering of fire safety measures are now identified as disciplines in their own right. Undergraduate and postgraduate degrees are offered in fire safety management and fire engineering. Fire engineers can now become registered chartered engineers, incorporated engineers and engineering technicians through their own professional body,

the Institution of Fire Engineers. Fire engineering is, however, a discipline that impinges on, and has traditionally drawn from, many other disciplines, including management science, building design, mechanical engineering, electrical engineering, chemical engineering, law, psychology, physics and chemistry. Fire-related legislation has recently undergone major change; knowledge of fire behaviour in complex buildings is advancing, and the facilities for formal education of practitioners in the field of fire safety are expanding, as is the codification of fire-engineering knowledge.

The purpose of this book is to provide a basic guide to this complex subject for the non-specialist, such as the facilities manager, the personnel manager, the health and safety manager, the building manager and others with responsibilities for fire safety in buildings. It is, however, hoped that it will also provide a basic reference for certain fire safety practitioners, such as company fire safety managers and officers in enforcing authorities/bodies when they first enter this field.

The approach adopted in this book is to divide the subject into a number of discrete components, each of which is considered separately. The breadth of the topics discussed is such that it is not possible to consider any one topic in a depth beyond that required by the generalist. However, guidance is given on sources of further information for the reader with an interest in specialist aspects of the subject.

The division of fire safety into independent topics is necessary in a textbook; it is not the manner in which fire safety should be approached in an actual building. For example, the absence of an automatic fire detection system in a relatively large building in which people sleep would result in a poor standard of fire safety. The absence of smoke-stop doors in the long and convoluted corridors of the same building would, in itself, be considered unacceptable, as would the absence of emergency lighting. However, the overall effect of these three deficiencies is much greater than the simple sum of the individual deficiencies; a fire during the night may develop, undetected, until the corridors are completely smoke logged, so that means of escape are impassable and, in any case, difficult to use because the normal lighting has failed due to fire damage to the cables of lighting circuits. Many fire disasters have arisen from an unfortunate combination of apparently independent defects, at least some of which are almost always related to management shortcomings, and any one of which, if rectified, would have ameliorated the situation in which those involved found themselves.

A corollary to the above assertion is that it is possible to design and engineer an integrated ‘package’ of fire precautions that enables one or more fire safety objectives to be achieved. This is the concept of ‘fire engineering’, which is already recognized by legislation and the manner in which it is enforced, but it is likely that, in the future, the scope for this approach will continue to expand (see Chapter 22). Already, it is well accepted that compliance with the goals set by building regulations can be achieved by a fire engineering approach, rather than solely by the rigid, prescriptive approach, albeit that, for most projects, the traditional approach will often suffice. On a more routine level, the fire risk assessments that legislation requires be carried out for existing buildings should not involve inflexible application of guidance; the action plan that emanates from the fire risk assessment should be proportionate to the risk.

Unfortunately, there is still much to be learned about the interrelationships between the many forms of fire precautions, and fire engineering is a matter for the specialist. Before departing from standard solutions, the reader is, therefore, advised to seek expert opinion and the views of enforcing authorities; the latter can still sometimes be rather conservative in approach. Indeed, before specifying any fire protection measure of any real complexity, cost or effect on overall fire safety, early consultation with all interested parties, particularly those charged with enforcement of legislation and insurance of the property, is strongly advocated.

Further reading

Fire Statistics, United Kingdom. Published annually by Communities and Local Government.

Reference

1. Source: *The Economic Cost of Fire: Estimates for 2004*. Published by the Office of the Deputy Prime Minister (now Communities and Local Government).

Fire safety legislation

Historical background

Historically, most fire safety legislation has arisen from specific fire disasters. For example, it is widely held that the Factories Act 1961 arose as a result of the fire at a mill in Keighley some five years before. Equally, it is said that the fire at Hendersons department store in Liverpool in 1960 gave rise to the fire safety requirements imposed by the Offices, Shops and Railway Premises Act 1963. Even the one time cornerstone of United Kingdom fire safety legislation, the Fire Precautions Act 1971, was said to be enacted as a result of 11 deaths in a fire at the Rose and Crown Hotel, Saffron Walden in 1969. In the 1980s, the Fire Safety and Safety of Places of Sport Act 1987 followed the fire at Bradford football stadium in 1985, while the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 arose as a result of the fire at King's Cross underground station in 1987.

Sometimes, it is not new legislation that follows a disaster, but a significant change in requirements imposed under legislation. In England and Wales, the maximum compartment size specified for single-storey retail premises in guidance published in support of the Building Regulations in 2000 was influenced by the death of a female fire-fighter in a fire in retail premises. In Scotland, following a disastrous fire at a residential care home in 2004, the Building (Scotland) Regulations specified, for the first time, that residential care homes need to be protected by an automatic fire suppression installation.*

This approach to the legislative control of fire safety caused much fire safety legislation to be piecemeal and fragmented over many decades. It was only

* In England and Wales, this is not mandatory if a sprinkler system is provided. However, certain design freedoms in residential care premises have, since 2007, been accepted under the guidance that supports the relevant building regulations; an example is that bedroom doors need not be self-closing.

in 2006, with the coming into force of the Regulatory Reform (Fire Safety) Order 2005 in England and Wales (and equivalent legislation in Scotland and, subsequently, Northern Ireland) that there has been major rationalization of a great swathe of fire safety legislation, somewhat akin to that achieved in the more general field of health and safety in 1974, when the Health and Safety at Work etc. Act was introduced.

One of the earliest attempts to consolidate fire safety legislation followed from the recommendations of the Holroyd Report in 1970. The report recommended that fire safety legislation should be divided into two main branches; one dealing with new buildings (and building works in the form of extending or materially altering an existing building), while the other deals with occupied premises. This is largely the current situation and remains the Government's intent for the long term future. In England and Wales, new buildings and major alterations to existing buildings are required to comply with the Building Regulations 2000. In Scotland, buildings must comply with the Building (Scotland) Regulations 2004 and, in Northern Ireland, with the Building Regulations (Northern Ireland) 2000. In England and Wales, on completion of the building work, fire precautions are controlled by the second 'branch' of legislation in the form of the Regulatory Reform (Fire Safety) Order 2005. (A similar situation exists in Scotland and Northern Ireland.) There is, however, a form of bridge (first introduced in 2007) between the two branches, in that the Building Regulations 2000 (as amended) require that, on completion of the building work, or on occupation of the building or extension (whichever is earlier), suitable fire safety information is passed on to the responsible person (as defined in the Regulatory Reform (Fire Safety) Order) to enable that person to operate and maintain the building or extension safely.

In England and Wales, the building regulations are the responsibility of Communities and Local Government (CLG), and they are enforced either by the building control officer (BCO) of the local authority or by a private sector approved inspector (AI). The BCO or AI consults with the fire and rescue authority concerning various fire precautions. In Scotland, the Building (Scotland) Regulations are produced by the Scottish Building Standards Agency, while in Northern Ireland the relevant government department is the Department of Finance and Personnel. In Scotland and Northern Ireland, there are no private sector building control bodies, such as approved inspectors; responsibility for enforcement of building regulations rests solely with local authorities.

Building Regulations 2000

The Building Regulations 2000 apply to virtually all new buildings, material alterations to existing buildings and material changes of use of buildings (as defined in the Regulations) in England and Wales. However, certain buildings are exempt from control, and these include the following:

- buildings to which the Explosives Acts 1957 and 1984 apply;
- buildings on sites for which a licence under the Nuclear Installations Act 1965 is required;
- ancient monuments;
- agricultural buildings and greenhouses of limited size, subject to separation from other buildings;
- temporary buildings;
- small detached buildings and detached buildings that would not normally be entered by people, subject to adequate separation from other buildings;
- certain other extremely small buildings with no sleeping accommodation.

Building control bodies do not have any power to apply the Regulations to Crown buildings. However, government policy is that Crown buildings should comply with the Regulations.

Building regulations contain no detailed technical requirements. Instead, they are cast in so-called ‘functional form’, containing only functional requirements that are, in effect, simply fundamental fire safety objectives.

In England and Wales, there are just five functional requirements relating to fire safety. These are set out in Part B of Schedule 1 to the Building Regulations 2000, and are generally referred to as Regulations B1, B2, B3, B4 and B5. The requirements of each Regulation are now discussed in turn.

Regulation B1

This requires that all buildings to which the Regulations apply are designed and constructed so that there are:

- adequate means of giving early warning of fire; and
- (other than in prisons) appropriate means of escape in case of fire from the building to a place of safety outside the building.

The means of escape must be such that they can be safely and effectively used at all material times.

Thus, the measures addressed may not be limited to structural measures; in many types of building, emergency escape lighting may be necessary (see Chapter 9). It should be noted that the requirement for early warning of fire, which was only introduced into the Regulations in 2000, brings fire detection and fire alarm systems within the scope of the Regulations; this includes material alterations to such systems, for which approval under the Regulations is necessary.

Regulation B2

B2 is concerned with measures to restrict the spread of fire over internal surfaces, such as walls and ceilings. The requirement is that materials used on walls and ceilings must be adequately resistant to spread of flame over their surfaces and, in some cases, that, if ignited, the rate of heat release will be reasonable in the circumstances.

It should be noted that Regulation B2 does not apply to floor coverings, and that an alteration to linings is not a material alteration for which approval under the Regulations is necessary.

Regulation B3

B3 is concerned with measures to limit the spread of fire within the building and to prevent structural collapse due to fire. It requires that:

- in the event of fire, the building will remain stable for a ‘reasonable period’;
- certain large buildings be subdivided into fire-resisting compartments and/or be provided with suitable automatic fire suppression systems;
- concealed spaces be limited to prevent hidden fire and smoke travel;
- party walls be fire resisting.

Regulation B4

B4 is concerned with the prevention of fire spread from one building to another. It requires that external walls provide adequate fire resistance, and that roofs be adequately resistant to spread of flame, to achieve this objective.

Regulation B5

B5 requires access to the building and other measures to assist the fire and rescue service, although, strictly, only measures to ensure safety of life. These measures comprise:

- suitable access to the building for fire appliances and fire-fighters;
- in certain buildings (particularly those of significant height above or depth below ground) measures to facilitate fire-fighting, such as fire-fighting stairs, lobbies and, in some cases, lifts, plus fire mains (see Chapter 16);
- measures for heat and smoke removal in basements.

A single publication produced by Communities and Local Government describes, in technical detail, the way in which the functional requirements of the five regulations can be satisfied. This publication, Approved Document B, defines, for example, periods of fire resistance according to the size and use of the building and makes reference to various British Standard tests.

However, the designer is not obliged to adopt the solutions described in the Approved Document, only to satisfy the functional requirements of the Regulations. The designer may develop a different solution, or wish to convince the building control officer or approved inspector that, in the circumstances, the ‘conventional’ solution in the Approved Document is unreasonable. Nevertheless, compliance with Approved Document B would tend to satisfy the Regulations. Equally, if an alternative approach is followed, it is necessary to demonstrate that the performance requirement is still satisfied.

Alternative approaches to the guidance contained in the approved document comprise:

- use of an alternative recognized guidance document for special occupancies (for example, the Approved Document itself recommends the use of other guidance documents in the case of hospitals, schools, enclosed shopping centres, assembly buildings and buildings containing one or more atria);

- use of a generally applicable guidance document, such as the relevant part of BS 5588;
- a ‘fire engineering solution’ (see Chapter 22).

The performance requirement does, of course, relate only to health and safety, and not to protection of property. Thus the fire resistance of, for example, many single-storey buildings in England and Wales may be quite short, and compartment sizes were at one time unlimited. This led to concern regarding the unconfined spread of fire through, and early collapse of, a number of large, uncompartmented, single-storey retail units when fire occurred. Accordingly, Approved Document B does now advocate, for example, limitation of compartment sizes in single-storey retail premises and single-storey warehouses. In contrast, no limit is advocated for other single-storey occupancies, but limits are imposed on maximum compartment sizes in all multi-storey buildings, other than offices and car parks for light vehicles.

Once a building is erected, ongoing control of fire safety is, in the case of nearly all buildings other than dwellings, effected in England and Wales by the Regulatory Reform (Fire Safety) Order 2005 (see p. 8). However, the Building Regulations control ‘material alterations’ to a building, i.e. any alteration that would adversely affect the fire safety of the existing building as controlled by Regulations B1, B3, B4 or B5. Thus if, for example, part of a fire-resisting enclosure, required by the Building Regulations at the time of construction, were completely removed by an occupier as part of an alteration, the occupier would be guilty of an offence, unless the alteration had been approved by local authority building control or by an approved inspector.

Building regulations in Scotland and Northern Ireland

Similar principles to those of the Building Regulations 2000 apply in both Scotland and Northern Ireland.

In Scotland, the Building (Scotland) Regulations 2004 are set out in functional form within Section 2 of Schedule 5 to the Regulations, but contain an additional major requirement, namely the provision of an automatic life-safety fire suppression system; this requirement applies, however, only to enclosed shopping centres, residential care buildings, sheltered housing and high-rise flats. On the other hand, the requirement to provide fire warning systems only applies to dwellings, residential buildings and enclosed shopping centres.

The Scottish regulations also require that design and construction of buildings be such that electrical installations do not become a source of fire. (In England and Wales, control over safety of electrical installations only exists in respect of domestic premises.)

The Regulations in Scotland are supported by two technical handbooks (one for domestic premises and one for non-domestic premises), the function of which is similar to that of Approved Document B in England and Wales.

In Northern Ireland, the Building Regulations (Northern Ireland) 2000 are virtually identical to the Building Regulations in England and Wales. The wording of the functional requirements within Regulations E2–E6 is similar to that in Regulations B1–B5 of the Building Regulations 2000 respectively.

The supporting guidance for the Building Regulations (Northern Ireland) can be found in Technical Booklet E, published by the Northern Ireland Department of Finance and Personnel. Its recommendations are very similar (but not absolutely identical) to those in Approved Document B.

Local acts

It would be incorrect to assume that, in designing a building, only the nationally applicable legislation discussed above applies. In some areas of England and Wales, local acts impose additional requirements for certain categories of premises, such as high buildings and large storage buildings.

Perhaps the most well-known local legislation is that contained in Section 20 of the London Building Acts (Amendment) Act 1939 [as amended by the Building (Inner London) Regulations 1985]. This legislation empowers London district surveyors to require special fire safety measures, such as sprinkler protection, in certain high buildings, or in large uncompartmented buildings used for manufacturing or warehousing, in inner London. Requirements of local acts are not generally concerned with means of escape for occupants, but with measures that will limit the extent of fire spread and assist the fire and rescue service. Since such measures are also incorporated in national building regulations, the need and justification for them to be addressed in local acts is not entirely logical. It is likely that, in the long term, fire safety provisions of local acts will be repealed as part of any further reshaping of fire legislation. It should, however, be noted that various local acts have now been amended by the Regulatory Reform (Fire Safety) Order 2005 to prevent overlap between the two branches of legislation.

Existing buildings in England And Wales: The Regulatory Reform (Fire Safety) Order 2005

Background

The Regulatory Reform (Fire Safety) Order 2005, which came into force on 1 October 2006, totally reshaped the structure of fire safety legislation in England and Wales. It repealed (or amended to delete requirements in respect of fire safety) virtually all legislation that had previously made specific requirements in respect of fire safety in occupied buildings in England and Wales. This repeal included the Fire Precautions Act 1971, which had previously required fire certificates, issued by the fire and rescue authority, for many common places of work in Great Britain; existing fire certificates ceased to have effect from the date that the Regulatory Reform (Fire Safety) Order (the 'Fire Safety Order') came into effect. The Fire Certificates (Special Premises) Regulations 1976, under which fire certificates were issued, for certain high-hazard sites and construction sites, by the Health and Safety Executive, were also repealed.

The repeals also included the Fire Precautions (Workplace) Regulations 1997 and those parts of the Management of Health and Safety at Work Regulations 1999 that made requirements of a managerial nature in respect of fire safety (other than in respect of fire safety within industrial processes, etc., which remain, in effect, part of general requirements of health and safety legislation). However, this now repealed legislation was originally brought into force to satisfy the requirements of two European directives, namely the Framework Directive and the Workplace Directive, both of which had been signed by the Council of Ministers in Brussels in 1989. In repealing the legislation under which these directives were implemented in Great Britain, it was still necessary for any new legislative regime to implement the requirements of the directives, which relate to health and safety (including safety from fire) of employees in workplaces.

For this reason, the requirements of the Fire Safety Order, in respect of fire precautions, adopted virtually the exact wording of the Fire Precautions (Workplace) Regulations, which itself had followed, almost exactly, the relevant wording of the European directives. The Fire Safety Order also adopted wording contained within the Management of Health and Safety at Work Regulations 1999, thereby applying relevant health and safety requirements within these regulations, which had also emanated from the European directives, more specifically to fire safety. While the reader need

not be concerned with this background to the wording used in the Fire Safety Order, it may assist with an insight into the somewhat convoluted, and in some cases vague, wording of the Fire Safety Order; much of the wording is, in effect, second generation wording from the Framework Directive and the Workplace Directive.

The main purpose of the Fire Safety Order was not, however, to implement the European directives, as this had already been achieved. It is merely that, in reshaping fire safety legislation, it was necessary to maintain the requirements of the directives. The purpose of the Fire Safety Order, which was created using the powers granted by the Regulatory Reform Act 2001, was to consolidate and rationalize fire safety legislation, which had previously taken the form of a multitude of disparate legislative instruments, into a single legislative instrument.

Thus, the effect of the Fire Safety Order is to impose, in one order, an almost universal duty of fire safety care on almost all non-domestic premises. The rationalization and simplification of fire safety legislation had been the intention of the Government for many years, following government scrutiny in 1994, carried out in accordance with deregulation initiatives. The 'Independent scrutiny of fire safety legislation and enforcement' had concluded that fire safety legislation in England and Wales was, at the time, conflicting and confusing, to the extent that it imposed unnecessary burdens on businesses. The scrutiny recommended rationalization and simplification, and the Fire Safety Order was the Government's response to that recommendation.

At the time of writing, the coming into effect of the Fire Safety Order is quite recent. As yet, there is no relevant case law. The somewhat vague nature of the language used in much of the Fire Safety Order is such that, until there is case law, the boundaries of its scope and the manner in which certain requirements must be interpreted will be a matter for debate. While, to assist readers, the author has endeavoured to interpret, where necessary, certain aspects of the Order, ultimately only the Courts can determine matters of interpretation.

Scope of the Fire Safety Order

Because the Fire Safety Order effectively repealed all other legislation (or parts of legislation) under which fire precautions in existing buildings was primarily controlled (with the notable exception of the Fire Precautions (Sub-surface Railway Stations) Regulations), the scope of the Order is extremely broad. It should be noted, firstly, that the requirements of the Order generally apply

to ‘premises’. However, the term premises is somewhat all encompassing, since the definition of premises, given in Article 2 of the Order, includes ‘any place’, and, in particular, includes:

- a) any workplace (so ensuring that obligations under the relevant European directives are satisfied);
- b) any vehicle, vessel, aircraft or hovercraft;
- c) any installation on land (including the foreshore and other land intermittently covered by water), and any other installation (whether floating, or resting on the seabed or the subsoil thereof), or resting on other land covered with water or the subsoil thereof); and
- d) any tent or moveable structure.

Notwithstanding this very broad interpretation of premises, Article 6 of the Order then does apply some limitations to the application of the Order by excluding the following premises (but only those premises) from the application of the Order:

- a) domestic premises;
- b) offshore installations;
- c) ships (in respect of normal shipboard activities carried out by the crew under the direction of the master; during work on the ship in, say, a dry dock, the ship would, therefore, fall within the scope);
- d) fields, woods or other land of a forestry or agricultural undertaking, but which is not inside a building and is situated away from the undertaking’s main buildings;
- e) aircraft, locomotives or rolling stock, trailers or semi-trailers used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act;
- f) mines, other than buildings on the surface of the mine;
- g) borehole sites.

With regard to domestic premises, these are defined as ‘premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling’). The wording in parentheses is particularly important, since, by excluding, from the definition, common parts of blocks of flats and similar premises, such as houses in multiple occupation (see p. 42), such common parts fall within the scope of the Fire Safety Order. (The common parts of blocks of flats are, however, excluded from the equivalent legislation in Scotland and Northern Ireland.) It should also be noted that, by virtue of

Article 31 (10) of the Fire Safety Order, a prohibition notice (see p. 29) may be served on a house in multiple occupation (HMO), and this power is not limited to purely the common parts of the HMO.

The term ‘private dwelling’ is not defined in the Fire Safety Order. Clearly, however, its use must exclude from the scope of the Fire Safety Order the main residence of any single person or single household. Nevertheless, there remain certain ‘grey areas’, about which there cannot be absolute certainty without future case law.

Individual chalets on a holiday park are not considered to be excluded from the scope, nor, arguably, would caravans on a similar site, since these could probably not be regarded as private dwellings (unless in private ownership). They may in effect be regarded in totality as a fragmented hotel, and should no more be excluded than the individual guest bedrooms within a hotel.

At the other end of the spectrum, consider a cottage, owned by a single family and used only occasionally as their holiday home. If, for several weeks a year, they choose to rent it to third parties, does it cease to be a private dwelling? Arguably, not. At what stage does the single holiday cottage, from which the family earn some meagre income, if extended in the level of commercial gain, or if extended to two or more cottages used as an income for the family, become the commercial holiday park?

Similarly, within a hospital, the overnight residence of an on-call doctor clearly comes within the scope of the Fire Safety Order. The flat occupied by the caretaker in a block of flats as their main residence, and for which rent is paid, is, arguably, a private dwelling and outside the scope of the Fire Safety Order. The same argument might be applied to dwellings owned by a private school and occupied by staff as their sole or main residences. Would, however, this situation alter if the caretaker or the school staff paid no rent, are on-call outside their normal working hours, are constrained to be present within their dwellings at certain times and have facilities, such as CCTV monitors for the site, in their dwellings?

Whereas, on the one hand, it is accepted that the dwellings of homeworkers, who work for their employer from a room within their own, privately owned dwelling, are outside the scope of the Fire Safety Order (but may not be outside the scope of the Health and Safety at Work, etc. Act and statutory provisions under the Act), and it is also accepted that the presence of gas fitters, carers and visiting nursing staff does not make a dwelling into a workplace, could the hypothetical circumstances described for the caretaker and school staff, turn

their dwellings into facilities provided for use in connection with a workplace, and hence part of a workplace, as defined in the Fire Safety Order?

In the case of most of the other premises to which the Fire Safety Order does not apply, other legislation continues to impose relevant requirements in respect of fire safety. For example, marine legislation deals with fire safety on ships, while public service vehicle licensing and taxi licensing generally deals with fire precautions in these forms of transport used by the public. (There may, however, be a form of 'loophole' in respect of, say, a bus used as both transport and sleeping accommodation for a travelling group of entertainers, since, even when it is parked on private land and used as sleeping accommodation, the licence for the vehicle is 'in force' (unless an application for a Statutory Off Road Notice [or SORN] had been made to suspend the licence)).

Similarly, the excluded offshore installations are those within the scope of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995, to which other safety-related legislation applies. The excluded mines are those within the scope of the Mines and Quarries Act 1985 (which makes requirements in respect of fire precautions and measures to prevent explosions) and the excluded borehole sites are those within the scope of the Borehole Sites and Operations Regulations 1995, Schedule 2, which makes requirements in respect of fire precautions.

The fire safety duties imposed by Part 2 of the Fire Safety Order (see p.19) are imposed on Crown buildings. However, certain powers of enforcement and powers to serve notices do not apply to buildings occupied by the Crown, although some of these powers do apply to buildings owned by the Crown, but occupied by others.

Dutyholders and competent persons

The Fire Safety Order introduced various defined groups of persons (some of whom were previously the subject of either the Fire Precautions (Workplace) Regulations or the Management of Health and Safety at Work Regulations) with whom the Order concerns itself, namely the:

- responsible person;
- other persons having control of premises;
- competent persons to assist with evacuation;

- competent persons to use fire-fighting equipment;
- competent persons to assist the responsible person to undertake the 'preventive and protective measures'.

The responsible person

It is primarily the 'responsible person' on whom the Fire Safety Order imposes requirements and duties. Accordingly, it is important to consider, for every premises, who exactly constitutes the responsible person (or 'RP'). The answer to this can be found in Article 3 of the Fire Safety Order. For most premises with which readers will be involved, the definition will be relatively straightforward, since, in the case of a workplace, Article 3 defines the RP as 'the employer'. This will be the body corporate – the company or organization that employs people to work in the premises. It should be noted, however, that, in the case of prosecution for an offence under the Order, a director, manager, company secretary or similar officer of the company could be prosecuted as well as, or instead of, the body corporate if the offence had been committed with that person's consent, connivance, or as a result of their negligence.

The definition of workplace is very broad, although it excludes domestic premises. (Hence, domestic servants or homeworkers are not protected by the provisions of the Order.) By definition, under the Order, a workplace means any premises, or parts of premises, made available to one or more employees. This includes any place within premises to which an employee has access while at work. It also includes the means of access to or egress from the place of work (e.g. footpaths external to the building or common parts within premises in multiple occupation), other than public roads.

It is obvious from the above definitions, that, thus far, we have not considered premises occupied by persons who are self-employed, with no employees. These persons are not employers, and the premises do not fall within the definition of workplace. However, if the premises are not a workplace, Article 3 defines the RP as the person who has control of the premises (as occupier or otherwise) in connection with the carrying on of a trade, business or undertaking (for profit or not). This definition, again, is very broad in nature and effectively encompasses virtually all premises, other than single-family dwellings, that are not already captured within the definition of workplace, including non-domestic premises where self-employed people work, the premises of voluntary organizations with no employees, etc.

However, lest, for any premises other than dwellings, there be any difficulty in finding an RP, Article 3 has a further ‘catch all’ for situations in which the premises are not a workplace and the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or undertaking. In such circumstances, the RP is defined by Article 3 as the owner of the premises. In practice, it is very difficult indeed to imagine a situation in which this would arise, although the owner will often already be the RP by virtue of having control for the purposes of his/her business.

Other persons having control of premises

The RP is the primary dutyholder under the Order, and can never escape this duty (e.g. by delegating to others). However, in addition to (but never instead of) the RP, the requirements imposed on the RP in respect of fire safety and fire precautions are also imposed on every other person who has, to any extent, control of the premises, so far as the requirements relate to matters under this other person’s control.

Article 5(4) of the Order gives a further clue as to who such persons might be. This person includes any person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to maintenance or repair of any premises (including anything in or on the premises), or an obligation in relation to the safety of the premises. The person is, however, only treated as this other person having control of premises to the extent that the above obligations extend.

In practice, the most obvious examples of this ‘other person’, on whom the Order imposes fire safety duties, are the owner and managing agents of industrial or commercial premises in multiple occupation. Under tenants’ leases or tenancy agreements, the owners (and by virtue of their contract with the owner, the managing agents) are normally responsible for maintenance, repair and safety of the common parts. Often these parties are also responsible for maintenance of a building-wide fire detection and fire alarm system and/or automatic sprinkler installation. Thus, it would appear that in these circumstances, they are responsible for the *adequacy* of fire precautions in the common parts and for the *adequacy* of the building-wide fire protection systems. Equally, the tenants (as RPs) would also be responsible for shortcomings in these fire precautions if they affected persons using their premises. (Duties in respect of premises in multiple occupation are discussed later in this chapter.)

It should also be noted that fire protection systems maintenance contractors may have duties of care under the Order, at least in respect of their maintenance work. They are, in effect, a person having control by virtue of a contract for maintenance of something (the relevant fire protection system) in the premises.

Competent persons to assist with evacuation

Article 15(1)(b) of the Fire Safety Order requires that the RP nominate a sufficient number of competent persons to implement the fire procedures, so far as they relate to evacuation of the relevant persons from the premises. (This Article is extracted from the Management of Health and Safety at Work Regulations, which makes the same general requirement in respect of persons to implement procedures for serious and imminent danger). In practice, therefore, there will, in most premises, be a need to nominate fire wardens (see Chapter 20).

Competence is defined in Article 15(3) as having sufficient training and experience or knowledge and other qualities to enable the person properly to implement the evacuation procedures. Thus, fire wardens need to be properly trained.

Competent persons to use fire-fighting equipment

Article 13(3) of the Fire Safety Order requires that the RP must, where necessary, take measures for fire-fighting in the premises, adapted to the nature of the activities carried out, the size of the undertaking and of the premises. It is also required that competent persons are nominated to implement these measures and to ensure that the number of persons, their training and the equipment available to them are adequate, taking into account the size of, and the specific hazards involved in, the premises.

Thus, for virtually all premises, in practical terms, there will be a need to determine who is to use the fire-fighting equipment (portable fire extinguishers and/or hose reels). This could simply reflect very common fire procedures, whereby whoever discovers a fire may tackle the fire with a fire extinguisher if safe to do so – it could then reasonably be argued that anyone who discovers a fire is ‘nominated’ to take fire-fighting measures. It would need then, to be ensured that all occupants of the premises were adequately trained to do so.

This Article does, however, afford flexibility to the RP. An adequate number of persons might only be a proportion of employees, who are nominated to use the fire-fighting equipment, while other employees, not so nominated, are instructed never to use the fire extinguishers. It should also be noted that the requirement hinges on the *necessity* to nominate people.

The requirement imposed by this Article in the Fire Safety Order is carried over from the now repealed Fire Precautions (Workplace) Regulations and extended to protect relevant persons; in the case of the Fire Precautions (Workplace) Regulations, the necessity was only for the purpose of safeguarding employees in the event of fire. Under those Regulations, some employers argued that it was *never* necessary, for example in a school, for anyone to use fire extinguishers in the event of fire in order to protect the teachers (as the employees).

This was, arguably, a very perverse interpretation of the legislation. All fires generally start as small fires. The concept of evacuating a building in the event of a small fire that could easily be extinguished with a fire extinguisher, while awaiting arrival of the fire and rescue service to what by then might be a serious fire, is now very outdated. Under the Fire Safety Order, it would seem to be expected that, in most buildings, there be, at least, an adequate number of persons able to use fire extinguishing appliances on a small fire. The RP would need, in the opinion of the author, to go to some lengths to demonstrate that such arrangements were not necessary, albeit that, say, in a single storey premises of just one or two rooms with only two or three occupants, this might be possible. Again, the definition of competence is defined in Article 15(3) as having sufficient training and experience or knowledge and other qualities to enable the person properly to implement the fire-fighting measures. Thus, anyone who is expected to use fire extinguishers and/or hose reels needs to be properly trained in the use of this equipment.

Competent persons to assist the responsible person

Article 18(1) of the Fire Safety Order requires that the RP must appoint one or more competent persons to assist the RP in undertaking the ‘preventive and protective measures’ (see p. 18). The only exception to this requirement relates to self-employed persons, or business partners, where, in either case, there is competence on the part of the self-employed person or one or more of the business partners. In simple terms, this means that every RP must have access to competent advice on compliance with the Fire Safety Order. Article

18(2) requires that the number of persons appointed, and the time available to them, are adequate.

Article 18(8) requires that, where RPs have competent persons in their employment, they must be appointed for this purpose in preference to any third party. Thus, where possible, in-house advice must be used, rather than, say, external consultants. It should be noted, however, that it is not necessarily this competent person who must carry out the fire risk assessments, although this may, or may not, be the case. For example, the in-house competent person might be the fire safety manager or health and safety manager of a large group. This person would then provide the competent assistance, subject to satisfying the definition of competent, namely having sufficient training and experience or knowledge and other qualities to render the assistance required. The in-house competent person then might arrange for others, such as consultants, to carry out the fire risk assessments, either because of the number of premises involved or because of the need for greater expertise in fire safety than that of the in-house competent person; competence is, in this connection, generally regarded to include recognition of a person's own limitations and a willingness to seek external advice when appropriate.

A small employer will, however, often need to rely on external advice. In such a case, Article 18(4) requires that the RP provides the external adviser with sufficient information, including information about dangerous substances or any factors that could affect people's safety. It is important, therefore, that the RP does not attempt simply to delegate all consideration of fire safety to a third party.

Relevant persons

The objective of the Order is primarily to protect *relevant persons* from fire. Relevant persons are any persons who are, or may be, lawfully on the premises. Thus, this would include employees, visitors, contractors, etc. and it includes the RPs themselves. It does not, however, include fire-fighters when they attend a fire or other emergency at the premises. (However, there is an obligation to maintain equipment provided for the safety of fire-fighters.)

Relevant persons also include anyone in the immediate vicinity of the premises who is at risk from a fire on the premises. As well as, perhaps, including passers-by, this could include those using common escape routes from a commercial building in multiple occupation, into which, say, a tenant's premises open.

Preventive and protective measures

What are the so-called preventive and protective measures with which the RP needs to receive assistance from a competent person? These are simply the measures that have been identified, by means of the fire risk assessment, as the ‘general fire precautions’ needed for compliance with the Order.

Duties of the RP regarding fire precautions

Having determined who is the RP for the premises, and considered the various other categories of person with whom the Order concerns itself, we need to now consider what exactly is expected of the RP in terms of fire precautions. The duties in this respect are set out in Article 8 of the Order.

Article 8(1) requires that the RP take such *general fire precautions* as will ensure, so far as is reasonably practicable, the safety of any employees of the RP. ‘Reasonably practicable’ does not simply mean that it is feasible to take a particular precaution; it is a less onerous burden than ‘practicable’. The existence of the risk must be weighed against the cost, effort and difficulty of addressing the risk, although, in terms of cost, the size and financial status of the organization has no real relevance; it would be inequitable to expect one organization to remove or reduce risk to employees, while another did not remove or reduce an identical risk simply because it could not afford to do so.

Article 8(2) requires that, in relation to relevant persons who are not the RP’s employees, the RP must take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe.

The broad concept of fire precautions is discussed in Chapter 4. In the Order, *general fire precautions* are defined as:

1. measures to reduce the risk of fire on the premises and the risk of the spread of fire on the premises;
2. measures in relation to the means of escape from the premises;
3. measures for securing that, at all material times, the means of escape can be safely and effectively used;
4. measures in relation to the means for fighting fires on the premises;
5. measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises; and

6. measures in relation to the arrangements for action to be taken in the event of fire on the premises, including:
 - a) measures relating to the instruction and training of employees; and
 - b) measures to mitigate the effects of the fire.

The precautions required under the Fire Safety Order do not, however, extend to process fire precautions, such as would be required by the Health and Safety at Work, etc. Act 1974, or legislation made under the powers of that Act. Thus, fire precautions associated with, for example, preventing fire or explosion in an industrial process remain within the scope of health and safety legislation and are enforced by the Health and Safety Executive. The same is true of precautions specific to the use and storage of dangerous substances, although the general fire precautions need to take account of such substances.

It should be noted that there is a subtle difference between the duty imposed by the Fire Safety Order in relation to employees and that imposed in relation to non-employees. The safety of the former is to be ensured (as far as is reasonably practicable) by the general fire precautions adopted. In the case of non-employees, the duty is only to ensure that the *premises* are safe. The difference might be considered to arise from the greater control employers have over the safety of their employees (e.g. by training, provision of information, etc.), whereas, in the case of, for example, the public, all that can be ensured is that the premises are safe for their use; their behaviour is less under the control of employers than that of employees.

Equally, the flavour of the entire Order is to impose a more onerous duty of care in respect of safety of employees, over and above the duty imposed in the case of non-employees, to ensure compliance with the European Directives, which are concerned primarily with employee safety and make employers unconditionally responsible for the safety of employees; the difference in wording might also be considered to arise from this philosophy. Moreover, the employees are likely to be nominated to carry out duties that assist in the safety of non-employees, thereby making the premises safe for the non-employees.

Fire safety duties

The *fire safety duties* imposed by the Fire Safety Order are contained in Part 2 of the Order. Articles 8–22 inclusive set out the measures, both physical and managerial, that the responsible person (and, hence, where relevant, also the

person having control of the premises) must take. The duty to take *general fire precautions*, imposed by Article 8 of the Fire Safety Order, was discussed earlier in this chapter. In order to identify the general fire precautions that these dutyholders must take, a fire risk assessment must be carried out. The requirement to carry out this risk assessment is contained in Article 9, which also requires that the assessment be reviewed regularly. Article 9 also requires that the responsible person, as soon as practicable after the assessment is made or reviewed, records the significant findings, including the measures that have been, or will be, taken in order to comply with the Fire Safety Order, and records any group of persons identified as being especially at risk, if any of the following apply:

- a) the RP employs five or more employees (anywhere within the organization and not merely within the premises concerned);
- b) a licence under an enactment is in force;
- c) an alterations notice (see p. 27) requiring that this information be recorded is in force.

Where a dangerous substance is, or is liable to be, present, the risk assessment must include consideration of various matters set out in Part 1 of Schedule 1 of the Fire Safety Order. No new work activity involving a dangerous substance may commence unless the risk assessment has been made and the measures required to satisfy the Order have been implemented. Dangerous substances are defined within the Order, but, basically, these are substances that are flammable, explosive or oxidizing, or that create a fire risk because of their properties.

If young persons (under 18) are to be employed, the fire risk assessment must take particular account of matters set out in Part 2 of Schedule 1 of the Order. The responsible person must not employ a young person unless he or she has, in relation to the risks to young persons, made or reviewed the fire risk assessment, taking account of these matters. Fire risk assessment is the subject of Chapter 5.

Where the responsible person implements any preventive and protective measures, they must do so on the basis of the '*principles of prevention*'. These principles are set out in Part 3 of Schedule 1 of the Fire Safety Order (but were, previously, applied to fire safety by the Management of Health and Safety at Work Regulations 1999). The principles of prevention are:

- a) avoiding risks;
- b) evaluating the risks that cannot be avoided;

- c) combating the risks at source;
- d) adapting to technical progress;
- e) replacing the dangerous by the non-dangerous or less dangerous;
- f) developing a coherent overall prevention policy, which covers technology, organization of work and the influence of factors relating to the working environment;
- g) giving collective protective measures priority over individual protective measures;
- h) giving appropriate instructions to employees.

This emphasizes the holistic approach of the Order to fire safety, necessitating both the prevention of fire and the protection of people from fire.

Means of escape

The term ‘means of escape’ is used within the definition of ‘*general fire precautions*’, but does not appear explicitly in any of the articles within the Order. This is simply a result of the use of European terminology in the ‘copying out’ of the relevant European directives. However, Article 14 of the Fire Safety Order (‘Emergency routes and exits’) may effectively be summarized as a requirement for adequate means of escape.

Article 14(1) requires that ‘where necessary in order to safeguard the safety of relevant persons, the responsible person must ensure that routes to emergency exits from premises and the exits themselves are kept clear at all times’. This is simply a requirement not to obstruct escape routes.

Article 14(2) specifies that the following requirements must be complied with in respect of premises where necessary (whether due to the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances) in order to safeguard the safety of the relevant persons:

- emergency routes and exits must lead as directly as possible to a place of safety;
- in the event of danger, it must be possible for persons to evacuate the premises as quickly and as safely as possible;
- the number, distribution and dimensions of emergency routes and exits must be adequate having regard to the use, equipment and dimensions of the premises and the maximum number of persons who may be present there at any one time;
- emergency doors must open in the direction of escape;

- sliding or revolving doors must not be used for exits specifically intended as emergency exits;
- emergency doors must not be so locked or fastened that they cannot be easily and immediately opened by any person who may require to use them in an emergency.

However, none of these requirements in Article 14(2) should be regarded as prescriptive requirements of an absolute nature. It should be noted that all requirements are prefixed by the qualification that these measures must be implemented *where necessary*. Means of escape is discussed in more detail in Chapter 7. At this stage, it should be noted that the necessity for the measures is determined by the fire risk assessment.

Means for securing the means of escape

The *general fire precautions* include measures for securing that, at all material times, the means of escape can be safely and effectively used. More explicit requirements of the Fire Safety Order in this respect can be found in Articles 14(2)(g) and 14(2)(h). These require that:

- emergency routes and exits must be indicated by signs; and
- emergency routes and exits requiring illumination must be provided with emergency lighting of adequate intensity in the case of failure of their normal lighting.

Once again, these measures need only be implemented *where necessary* to ensure the safety of relevant persons from fire. Fire safety signs are discussed in Chapter 10 while emergency escape lighting is discussed in Chapter 9.

Fire-fighting and fire detection

The *general fire precautions* include measures in relation to the means for fighting fires on the premises and measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises. Specific requirements in respect of these measures are set out in Article 13 of the Fire Safety Order.

Article 13(1) requires that *where necessary* (whether due to the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances) in order to safeguard the safety of relevant persons, the responsible person must ensure that:

- the premises are, to the extent that it is appropriate, equipped with appropriate fire-fighting equipment and with fire detectors and alarms;
- any non-automatic fire-fighting equipment so provided is easily accessible, simple to use and indicated by signs.

In addition, the responsible person must, where necessary:

- take measures for fire-fighting in the premises, adapted to the nature of the activities carried on there, the size of the undertaking and of the premises concerned;
- nominate competent persons to implement those measures and ensure that the number of such persons, their training and the equipment available to them are adequate, taking into account the size of, and the specific hazards involved in, the premises concerned; and
- arrange any necessary contacts with external emergency services, particularly as regards fire-fighting, rescue work, first aid and emergency medical care.

Arrangements for fighting fire and nominating people to implement these measures were discussed earlier in this chapter. The requirement for necessary contacts with external emergency services should be interpreted as, at least, arrangements to summon the fire and rescue service in the event of fire. However, the wording might also reasonably be interpreted as making requirements in respect of arrangements to meet the fire and rescue service on arrival. In the case of more complex premises, and those with hazards of which fire-fighters need to be aware, the wording could reasonably be interpreted as requiring routine liaison with the fire and rescue service to make them familiar with the premises and enable them to pre-plan for any incident.

Managerial requirements of the Fire Safety Order

The Fire Safety Order contains many requirements in respect of managerial arrangements that must be in place. Some of these, such as arrangements for summoning the fire and rescue service and for assisting with evacuation, have already been discussed. In addition to these requirements, the Fire Safety Order makes requirements in respect of:

- the establishment of fire procedures;
- where necessary, carrying out fire drills;
- provision of information to employees and carrying out training of employees;

- provision of information to employers and the self-employed from outside undertakings;
- cooperation and coordination of the measures taken in premises in multiple occupation;
- maintenance of fire precautions, including measures required under other legislation for the safety of fire-fighters;
- recording of the fire safety arrangements where five or more employees are employed by the undertaking, or a licence is in force, or an alterations notice, requiring a record to be made of the arrangements, is in force. (This, in effect, requires some form of fire safety manual for the building.)

Fire-fighters' switches for luminous tube signs

The Fire Safety Order makes requirements for cut-off switches for high-voltage signs, such as can be found outside certain entertainment venues, etc. If a cut-off switch complies with BS 7671, it is deemed to comply with the requirements of the Order. Moreover, the requirements of the Fire Safety Order do not apply in the case of cinemas licensed under the Licensing Act 2003 or to apparatus that previously complied with the relevant requirements of the Local Government (Miscellaneous) Provisions Act 1982.

If it is proposed to install high-voltage lighting to which the Fire Safety Order applies, the responsible person must give notice to the fire and rescue authority not less than 42 days before the installation work begins, showing where the cut-off switch is to be placed and how it is to be coloured or marked. The purpose of this is to ensure that the switch is readily recognizable by, and accessible to, fire-fighters.

Dangerous substances

The Fire Safety Order makes various requirements in respect of dangerous substances. As already noted, dangerous substances need to be taken into account in the fire risk assessment. Article 16 of the Fire Safety Order imposes additional emergency measures in respect of dangerous substances, including provision of information, suitable warning and other communication systems, suitable warnings before any explosive conditions are reached and suitable escape facilities. Unless the quantity of each dangerous substance poses only a slight risk to relevant persons and the responsible person has taken appropriate measures to control the risk, the responsible person must provide

information to the emergency services to enable them to prepare their own response; information must also be displayed at the premises, unless the results of the risk assessment make this unnecessary.

Many of the requirements of the Fire Safety Order in respect of dangerous substances overlap with requirements contained within the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR). These regulations are a statutory provision under the Health and Safety at Work, etc. Act and apply to workplaces. The purpose of DSEAR is to provide for the protection against the risk from fire, explosion and similar events arising from dangerous substances used, or present in, the workplace. Since a risk assessment is also required under DSEAR, employers should already have addressed most, or even all, of the requirements of the Fire Safety Order in respect of dangerous substances by complying with DSEAR. It should also be noted that the requirements of the Fire Safety Order in respect of dangerous substances are primarily intended to ensure that the general fire precautions (e.g. means of escape, fire warning, training) are appropriate. Special measures in relation to the use and storage of dangerous substances are more a matter for DSEAR.

General duties of employees at work

The Fire Safety Order requires that all employees must, while at work, take reasonable care for their own safety and the safety of relevant persons who may be affected by the acts or omissions of employees. It is also required that employees cooperate with employers to enable employers to comply with duties or requirements imposed under the Fire Safety Order. Employees are also required to inform their employer, or other employee with specific responsibility for the safety of employees, of any situation or shortcoming in protection measures that could affect the safety of the employee in question or that arises out of that employee's own activities.

Enforcement of the fire safety order

Enforcing authorities and their powers

The responsibility for the enforcement of the provisions of the Order and any future Regulations made under the Order will, for the majority of premises,

rest with the local fire and rescue authority, who use officers of the fire and rescue service for the purpose.

However, the Health and Safety Executive (HSE) are the enforcing authority for nuclear installations that require a licence or permit under the Nuclear Installations Act 1965, and for similar premises used by the Crown. The HSE also enforce the Fire Safety Order in the case of ships in the course of construction, reconstruction, conversion or repair by persons other than the master and the crew. Enforcement of the Fire Safety Order on construction sites is also the responsibility of the HSE, unless the construction site is within premises occupied by persons other than the construction workers. The Defence Fire Service enforces the Fire Safety Order in premises occupied solely by the armed forces or visiting forces, etc. They also enforce the Order in premises on Defence sites, even if the premises are not occupied by the armed forces.

The local authority enforces the Fire Safety Order in sports grounds that need safety certificates under the Safety of Sports Grounds Act 1975 and in regulated stands to which the Fire Safety and Safety of Places of Sport Act 1987 applies. Inspectors appointed by CLG generally enforce the Fire Safety Order in buildings owned or occupied by the Crown, and in United Kingdom Atomic Energy Authority premises (but not those nuclear installations for which the Health and Safety Executive are the enforcing authority). Powers to issue various notices are, however, limited in the case of Crown buildings.

The fire and rescue authority carries out periodic inspections, using a risk-based inspection programme that prioritizes inspections of higher-risk premises. Guidance on the development of a risk-based inspection programme for fire and rescue authorities has been provided by central government.

In general, fire and rescue authorities prioritize inspections towards higher-risk premises, such as those providing sleeping accommodation, larger public entertainment premises and the larger, more complex, commercial and industrial premises. It should not, however, be assumed that, simply because the premises may be small or present little risk, the fire and rescue authority will not carry out an inspection.

Inspectors appointed under the Order have power to enter any premises (at any reasonable time), and make any such inquiry as may be necessary to ascertain whether there is compliance with the provisions of the Order and to identify the responsible person. They can also require the production

of any relevant records, and have the power to inspect and take copies of such records. If the records are computerized, they can request extracts from these records.

The inspector can require any person having responsibilities in relation to the premises (whether or not the responsible person) to give the inspector such facilities and assistance as are necessary. The inspector also has the power to take samples to ascertain their fire resistance or flammability, and to subject any article or substance to any process or test.

Alterations notices

The enforcing authority may serve on the responsible person an ‘alterations notice’ if the authority is of the opinion that the premises:

- constitutes a serious risk to relevant persons; or
- may constitute such a risk if a change is made to them or the use to which the premises are put.

The alterations notice must specify the matters that, in their opinion, constitute or may constitute a serious risk.

The effect of such a notice means that the responsible person must, before making any changes that may result in a significant increase in risk, notify the enforcing authority of the proposed changes. These changes include a change to the premises, a change to the services, fittings or equipment in or on the premises, an increase in the dangerous substances that are present and a change to the use of the premises.

The alterations notice may also include additional requirements for the responsible person to:

- notify any other person, who has to any extent control of the premises, of the terms of the alterations notice;
- record the significant findings of the risk assessment and persons identified as being especially at risk;
- record the fire safety arrangements; and
- before making the changes, send the enforcing authority a copy of the risk assessment and a summary of changes proposed to the general fire precautions.

However, providing the responsible person notifies the enforcing authority prior to making the changes, there is nothing in the Order to prevent the changes going ahead. It would, however, be sensible to discuss and agree any changes with the enforcing authority prior to their implementation. In practice, alterations notices (which, in effect, continue a requirement previously applicable to premises certificated under the now repealed Fire Precautions Act) are likely to be quite uncommon.

Enforcement notices

If the enforcing authority is of the opinion that the responsible person, or any other person who has control of the premises, has failed to comply with any provisions of the Order, they may serve on that person an enforcement notice.

The enforcement notice must:

- state that the enforcing authority is of the opinion that the responsible person has failed to comply with the provisions of the Order;
- specify which provisions have not been complied with; and
- require that person to take steps to remedy the failure within a specified period (not being less than 28 days).

The notice may include directions as to the measures that the enforcing authority considers are necessary to remedy the failure and may be framed to provide a choice between different ways of remedying the contravention. The enforcing authority may withdraw or extend the period of the notice.

Before serving a notice that would oblige a person to make an alteration to the premises, the enforcing authority must consult other relevant bodies, such as the relevant local authority (building control), the enforcing authority for the Health and Safety at Work, etc. Act (e.g. HSE) and any other person whose consent to the alterations would be required. For example, if the notice required the responsible person to undertake building work, the enforcing authority would need to notify the building control authority before issuing the notice to ensure the works satisfy the requirements of the building regulations. If the building were subject to an initial notice by an approved inspector, the approved inspector must be notified.

Prohibition notices

If the enforcing authority is of the opinion that the use of the premises involves, or will involve, a risk to relevant persons (including risk arising from anything that affects means of escape), so serious, that the use of the premises ought to be prohibited or restricted, they may serve on the responsible person or other person a 'prohibition notice'.

Similar to requirements in respect of an enforcement notice, the prohibition notice must specify the matters that have created, or will create, the serious risk. The notice will direct that the use of all, or part of, the premises is prohibited or restricted until the matters specified in the notice have been remedied. The notice can be issued to take immediate effect, if the enforcing authority considers that the risk of serious personal injury is, or will be, imminent, or can be framed to take effect at some later specified period. As before, the notice may include directions as to measures that have to be taken to remedy the matters specified; as in the case of an enforcement notice, the directions may be so framed as to give a choice of remedies. The measures will only be those necessary to remedy the serious risk, and additional works may still be required to comply with the provisions of the Order.

It should be noted that, although a person can appeal against a prohibition notice, the appeal does not suspend the notice, as it does in the case of alterations or enforcement notices. Once issued, it would be an offence to contravene a prohibition notice until the notice is lifted, or amended, by the enforcing authority or the Courts.

Offences

The main offences under the Order relate to the requirements or prohibitions specified under fire safety duties and notices issued under the Order.

It is an offence for a responsible person, or any other person who has control of the premises, to:

- fail to comply with any requirement or prohibition imposed under Articles 8–22 (fire safety duties) and 38 (maintenance of measures provided for protection of fire-fighters), where that failure places one or more relevant persons at risk of death or serious injury in case of fire;

- fail to comply with any requirements imposed by an alterations notice, or enforcement notice;
- fail, without reasonable excuse, to ensure compliance with the requirements of the Order relating to luminous discharge tube signs (including failure to give notice).

In addition, it is an offence for any person to:

- fail to comply with the general duties of employees, where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- fail to comply with any prohibition or restriction imposed by a prohibition notice;
- make any false entries in a book, document or register or provide false information;
- intentionally obstruct an inspector or fail to comply with any requirements imposed by the inspector, without reasonable excuse;
- pretend, with intent to deceive, to be an inspector.

It should be noted that nothing in the Fire Safety Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee or a person nominated under articles in the Order.

Where an offence is committed by a body corporate or is proved to have been committed with the consent or connivance of, or be attributable to any neglect on the part of any director, manager, secretary or other similar officer or any other person, they, as well as the body corporate, are guilty of that offence.

Defence

It is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence. This defence is not available for a breach of the requirement to take general fire precautions for the safety of any of his employees, or of the requirement for elimination or reduction of risks from dangerous substances.

In any proceedings, it is for the accused to prove that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement. This reverse burden of proof, although generally inconsistent with criminal law, is consistent with the burden of proof in the case of defences