

Essex County  
Fire & Rescue Service



# Enforcement and Prosecution Policy

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## Distribution

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Protection 'Enforcement and Litigation' Intranet Page	Protection
ECFRS Website Business Fire Safety Pages	Corporate Communications.

## Version control

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## 1 Introduction

*The principal aim of this policy is to assist the Officers of Essex County Fire and Rescue Service in committing to “Making Essex a safe place to live work and travel” by reducing where possible the risks of death or serious injury and social economic costs from fires. Securing compliance with legal regulatory requirements is an important part of achieving this aim. This policy will outline how we seek compliance through educating and guiding business owners and the public and the routes we will take to enforce The Order informally and formally.*

*The responsibility for enforcing The Regulatory Reform (Fire Safety) Order (“The Order”) within Essex is devolved from the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called “the Authority”) to the Essex County Fire and Rescue Service, as provided under Section 6 of the Fire and Rescue Services Act 2004.*

The Authority is responsible for enforcing fire safety legislation within the County of Essex, the aforementioned legislation includes:

- *The Regulatory Reform (Fire Safety) Order 2005*
- *Fire Precautions (Sub-surface Railway Stations) Regulations 1989*
- *The Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR)*
- *The Construction (Design and Management) Regulations 2015*
- *The Fire and Rescue Services Act 2004*

*The Authority will ensure that all Fire Safety Inspectors are trained to an appropriate level of competency aligned to the Competency Framework for Fire Safety Regulators, in the use and contents of this policy and associated guidance documents.*

*The Authority will work with other enforcing authorities to ensure collaborative regulation.*

The Service’s statutory responsibilities under the Order require it to enforce fire safety legislation, as well as providing information and advice on fire safety matters to anyone requesting it. To discharge this responsibility, there are dedicated Fire Safety Inspecting Officers, administrative support staff who work in Command Teams at locations across Essex and our operational colleagues.

## 2 Enforcement Team

The Authority has a dedicated enforcement team within the Protection function. This team provides specialist advice and guidance to Protection teams and Business Fire Safety Inspectors on all aspects of enforcement of fire safety legislation.

They will assist, and be assisted by the Service's appointed legal advisor, and provide guidance and feedback to teams and individuals when required.

Their role is to support and facilitate the Business Fire Safety Inspectors in discharging their ability to enforce under The Order. Business Fire Safety Inspector

A BFS inspector can complete audits of all regulated premises including complex and higher risk residential buildings. They may audit buildings based upon fire engineering principles, however, should be cognisant of the scope of their competency and request appropriate assistance where necessary. Inspectors can investigate and report on breaches of fire safety legislation for the commencement of legal prosecutions. They can respond to submissions from building control bodies advising on fire safety issues, where appropriate, relating to the construction, demolition and/or refurbishment of regulated premises. They are qualified to take formal enforcement action for a breach of fire safety legislation. Only persons authorised in writing should undertake fire safety audits:

The following qualifications enable the following activities to take place:

Level 3 Certificate (within ECFRS this will be some operational crews): can offer advice and educate those responsible for fire safety in low-risk simple premises. An Advisor can undertake audits of simple low risk premises, but they are not qualified to take formal enforcement action for a breach of fire safety legislation.

Level 4 Diploma (within ECFRS all our business fire safety inspectors will be qualified to this level or on a pathway to achieve competency): can complete audits of all regulated premises including complex and high-risk residential buildings. They may audit buildings based upon fire engineering principles, however, should be cognisant of the scope of their competency and request appropriate assistance where necessary. Inspectors can

investigate and report on breaches of fire safety legislation for the commencement of legal prosecutions. They can report on submissions from building control bodies and advise on fire safety issues relating to the construction, demolition and/or refurbishment of regulated premises. They are qualified to take formal enforcement action for a breach of fire safety legislation.

All our Business Fire Safety Inspectors will be cognisant of the need to achieve compliance with The Order and will conduct themselves in a manner that is positively engaging with businesses to ensure they understand their responsibilities and, to develop an environment in which business owners are proactive in providing information to us of new or emerging risks so we can work with them to find a satisfactory solution.

It is an offence to impede an officer carrying out their duties under The Order and any such obstruction will be met with a swift decisive response from the service.

### **3 Policy**

The purpose of this policy is to provide Fire Safety Inspectors with the tools and support information to ensure best practice, so that they can carry out their functional duties efficiently and in line with the Fire and Rescue Plan, the protection strategy and the mission of Essex County Fire and Rescue Service. For persons to whom the Order is applicable, it will provide guidance of what to expect from a Fire Safety Inspector. The policy highlights the commitment of the Essex County Fire and Rescue Service to adhere to good enforcement policies, practices, and procedures and to demonstrate a commitment to using all the powers available to us under The Order.

Our primary functions as the enforcing authority are:

- To enforce the provisions of The Order, in line with current guidance and best practice and to embody the principles of the HSE enforcement management model and Regulators Code.
- To ensure our resources are deployed in line with our Risk Based Inspection Programme in order that the public, the environment and other relevant groups are protected.

- To ensure we use all available resources and legislative powers available to us under The Order to ensure compliance.

We aim to ensure that where appropriate all enforcement functions are carried out in an equitable, practical, and consistent manner.

This helps to promote an ever growing national and local economy and reflects Essex County Fire and Rescue Service's vision and mission.

We acknowledge, as an organisation, that a large majority of the local business community will work with us to comply with The Order in protecting relevant persons. However, we are also aware, that there will always be a small minority that will act irresponsibly and flout the law. We equally acknowledge that the understanding of the built environment has changed post Grenfell. Our aim is to work with, and educate those businesses, working to meet their legal obligations, without unnecessary expenditure, but also to act firmly, using the powers of enforcement and where necessary prosecution, against those who break the law.

As a Fire and Rescue Service it is our duty to act in a fair and impartial manner, whilst committing to our functional duties as an enforcing authority, without fear or favour.

### **3.1 THE PRINCIPLES OF GOOD ENFORCEMENT**

The Essex County Fire and Rescue Service believe in a robust but fair enforcement of the Order. As a result, and in line with the Health and Safety Commission's Enforcement Policy Statement, we aim to achieve this by the principles of proportionality in applying the law and securing compliance; consistency with approach; targeting of enforcement action; transparency about how we operate and what the regulated may expect; and accountability for our actions.

#### **3.1.1 Proportionality**

As a service we are committed to ensuring businesses are compliant with The Order to ensure the risk to the public is mitigated. Any enforcement action will be proportionate to the risk identified. We will endeavour to work with all businesses to ensure compliance, we

will however use all the powers available to us in a timely fashion to ensure swift compliance with The Order. Once an Audit has been completed, the appropriate outcome for enforcement action will be identified, by completion of the audit form. The resulting score will indicate the appropriate level of enforcement. The highest enforcement level found following a fire safety compliance audit shall indicate which level of enforcement is taken. For example, where an audit identifies that a premise is non-compliant (non-serious risk to life) for several articles and partially compliant in others, an Enforcement Notice shall be issued that will identify all areas of non or partial compliance. It is possible to serve a Prohibition Notice and an Enforcement Notice on the same responsible person (for different reasons), but it will not be appropriate to take any other combination of actions. If the audit identifies a risk so high that it is likely to cause serious harm or personal injury to relevant persons, a Prohibition Notice will be served immediately, any undue delay from recognition of the unsafe conditions to the actual service of the Prohibition Notice may assist the Responsible Person in appealing the Notice.

### **3.1.2 Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar goals. As a Fire and Rescue Service we will therefore carry out our duties in a fair, equitable and consistent manner.

Fire Safety Inspectors are expected to exercise their professional judgement to deal effectively with specific matters but, will adhere to standards and guidance bestowed upon them. They will also maintain a consistent but firm approach in the advice tendered; the use of enforcement powers; decisions on whether to prosecute; and in the response to incidents and complaints.

We, as an authority, will liaise with other authorities and enforcement bodies to achieve coordination and locate best practice.

### **3.1.3 Standards**

The Essex County Fire and Rescue Service will adopt and adhere to policy and guidance issued by the Ministry of Housing, Communities and Local Government (MHCLG), the National Fire Chiefs Council (NFCC), and National accepted standards where published.



### **3.1.4 Openness**

Essex County Fire and Rescue Service will pro-actively work with the business community and responsible persons to provide information in a range of accessible formats to ensure that relevant persons are sighted on the standards we will apply and that are pertinent to their organisation. We will respond to requests for support and advice in a timely manner within the remit of our responsibility.

### **3.1.5 Helpfulness**

The role of Essex County Fire and Rescue Service will actively involve working with responsible persons as defined by the Order, to advise and assist with compliance. Fire Safety Inspectors will provide a courteous and efficient service, identifying themselves by name and service identification and will provide contact points and telephone numbers for further communications. Essex County Fire and Rescue Service will also strive to coordinate services effectively to minimise unnecessary overlaps and time delays.

### **3.1.6 Fairness**

The Essex County Fire and Rescue Service will treat all people fairly; we will respect their privacy, dignity and pay particular attention to those with any special needs. This Policy has been subject to a people impact assessment and ECFRS will continually review its approach and work to ensure that no groups or communities are disadvantaged by our actions or inactions.

### **3.1.7 Transparency**

The Essex County Fire and Rescue Service will help those responsible for complying with The Order to understand what is expected of them and what they should expect from the Service. Fire Safety Inspectors will make it clear what is a statutory requirement and what is advice or guidance about what is desirable and considered best practice, but not compulsory, to meet the legislation.

### **3.1.8 Accountability**

The Essex County Fire and Rescue Service is accountable to the public for its actions. This means the Service must have policies and standards against which it can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

### **3.1.9 Complaints**

Essex County Fire and Rescue Service have in place a complaint procedure. Further information is available on request. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time scales involved. Essex County Fire and Rescue Service aims to resolve issues quickly and effectively, and to learn from the outcomes.

### **3.110 Targeting**

Essex Fire and Rescue Service maintain a Risk Based Inspection Programme that identifies the risk of all premises in Essex covered under The Order. We will target our activity at those premises that are deemed to present the greatest risk and ensure our resourcing is sufficient that we can deliver against this targeted approach. Where enforcement action is required, our Business Fire Safety Inspectors will identify the responsible person as defined by The Order. The decision on the level of enforcement is based upon the outcome of the audit conducted. The audit form will identify a provisional outcome, which the Officer will consider using professional judgement and the seriousness of the deficiencies found. For example, a single extinguisher not tested is not a significant area of non-compliance but a badly damaged fire door onto an escape route will be. Many contraventions found can be resolved far more quickly on the spot than resorting to formal notices, for example we have had fire doors fitted the same day as our audit. Enforcement notices must give a minimum time frame of 28 days to resolve the issue so experience and professionalism is key.

Essex County Fire and Rescue Service will seek compliance and where needed will take swift decisive enforcement action to ensure compliance.

### 3.1.11 Procedures and Powers

Before formal enforcement action is taken, officers/inspectors will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, where there is a serious and imminent risk to life from fire). This informal resolution will not be unnecessarily delayed and where enforcement action is considered necessary, an explanation of why such action is required will be given at the time, this will be confirmed in writing, in most cases within 5 working days and, in all cases, within 14 working days.

Where there are rights of appeal against formal enforcement action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the notice). The rights of the responsible person are provided verbally and in writing at the time of the service of the enforcement action.

The powers available to inspecting officers are identified in Article 27 of The Order. These powers are necessary to ensure effective enforcement of The Order. It must be stressed that there is nothing within Article 27 that allows for an inspector to carry out a forcible entry, search, or seizure. However, inspectors can, providing they produce their Authorised Inspector warrant supported by their identification, exercise the following:

- Enter, inspect the whole of the premises and anything within
- Ascertain compliancy of the provisions of The Order
- Identify the responsible person
- Require production of documents, records, plans etc. and to take copies of them
- Require facilities and assistance from any person in relation to the premises to enable the inspector to exercise his duties under The Order
- Obtain samples of substances or articles to ascertain fire resistance and flammability
- Where there is a likelihood of danger to relevant persons, can dismantle or test any article or substance in the presence of a person with responsibilities in relation to the premises, but not to destroy unless circumstances necessitate.

### **3.1.12 Confidentiality**

The Service will not disclose to others information officers obtained in the course of their work unless the law requires (or allows) it to do so.

The Service will ensure that the identity of persons contacting it, and any information supplied by them, is not revealed to a third party except:

- Where the law requires
- Where the case goes to court or tribunal, or
- With the prior agreement of the person supplying the information

### **3.1.13 Promoting fire safety (Educate and Inform)**

The Service endeavours to promote the requirements of fire safety legislation as widely as possible so that those who have associated statutory responsibilities are aware of what they need to do. This is done by answering general enquiries in the office and on site and producing guidance material in various formats. ECFRS will work with the business community and responsible persons to proactively encourage compliance with the order and information sharing. The Service has developed partnership links with other enforcing authorities, such as the Health and Safety Executive, industry and works closely with the Essex Chamber of Commerce to engage with commercial business owners. Through partnership working it aims to facilitate a consistent approach on enforcement matters and to raise a greater awareness of fire safety issues and risk assessment processes.

In pursuing Quality Assurance and Best Value principles the Service consults those we regulate, to get feedback on people's attitude to the work it does. This is achieved by way of a customer satisfaction survey however we are committed to developing more proactive approaches. The results of these customer surveys are used to improve our procedures or confirm that existing methods of working are satisfactory. Furthermore, we have a robust internal quality assurance process to ensure a standardisation of our approach and to enable sharing of best practice and learning across the team.

## 4 Supporting Legislation/Guidance

### 4.1 THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

Article 25 of The Order identifies the Fire and Rescue Authority (FRA) as an enforcing authority for the area in which a premise is or is to be situated.

Article 25 also refers to other enforcing authorities and the premises in which they enforce The Order. They are:

- The HSE – in respect of nuclear installations, construction sites, and ships that form part of Her Majesty’s Navy.
- The Defence Fire Service – in respect of premises occupied by armed forces of the crown.
- The relevant local authority – in respect of sports grounds and regulated stands.
- A Fire Safety Inspector (HM Inspectors) – in respect of crown premises.

Article 26 requires every enforcing authority to enforce the provisions of The Order in relation to any premises for which it is the enforcing authority.

The Order compliments the change in emphasis of the role of Fire and Rescue Authorities to one of prevention. The Fire and Rescue Authority will be responsible for ensuring public safety by monitoring compliance with the law and, where necessary, enforcing its requirements.

### 4.2 THE FIRE AND RESCUE SERVICES ACT 2004

Section 6(1) of the Fire and Rescue Services Act 2004, provides that:

“A fire and rescue authority must make provision for the purpose of promoting fire safety in its area.”

Section 6(2) of the Fire and Rescue Services Act 2004, provides that:

“In making provision under subsection (1) a fire and rescue authority must in particular, to the extent that it considers it reasonable to do so, make arrangements for:

- (a) the provision of information, publicity, and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire.
- (b) the giving of advice, on request, about:
  - (i) how to prevent fires and restrict their spread in buildings and other property.
  - (ii) the means of escape from buildings and other property in case of fire.”

### **4.3 FIRE AND RESCUE NATIONAL FRAMEWORK**

The Fire and Rescue National Framework (issued under section 21 of the FRSA) states:

Each fire and rescue authority integrated risk management plan must:

- demonstrate how prevention, protection and response activities will best be used to prevent fires and other incidents and mitigate the impact of identified risks on its communities, through authorities working either individually or collectively, in a way that makes best use of available resources
- set out its management strategy and risk-based programme for enforcing the provisions of the Regulatory Reform (Fire Safety) Order 2005 in accordance with the principles of better regulation set out in the Statutory Code of Compliance for Regulators.

## **5 Statutory Notices (Definitions)**

### **5.1 ALTERATIONS NOTICE**

An Alterations Notice may be served on the responsible person if the Fire and Rescue Authority is of the opinion that any structural alterations being made to the premises will constitute a serious risk to relevant persons (whether due to features of the premises, their use, and any hazard present or any other circumstances). Where an Alterations Notice has been served in respect of a premises, the responsible person must inform the Service of their intention to make any of the following:

- A change to the premises.

- A change to the services, fittings, or equipment in or on the premises.
- An increase in the quantities of dangerous substances which are in or on the premises.
- A change to the use of the premises.

## **5.2 ENFORCEMENT NOTICE**

Where the Fire and Rescue Authority is of the opinion that the responsible person or other person mentioned in Article 5(3), has failed to comply with any provision of the Regulatory Reform (Fire Safety) Order 2005.

The enforcement notice must only contain the measures which are necessary to ensure the failure is remedied. It is a legal requirement to comply with an enforcement notice and as such this may lead to a prosecution. The decision to prosecute or not will be made by the AM Prevention and Protection and Head of department in consultation with the legal advisor. Business Fire Safety Inspectors are trained to make contemporaneous notes and issue PACE Code B notices informing the Responsible Person that they are under investigation. Formal caution is normally only used as part of the interview under PACE.

## **5.3 PROHIBITION/RESTRICTION NOTICES**

Where the Authority is of the opinion that the risk to relevant persons in case of fire, is so significant it will be necessary for the Authority to prohibit or restrict the use of the whole premise or parts of the premises until the specified matters have been remedied. Article 31 of the Order gives the enforcing Authority the power to Prohibit or Restrict the use of the premises. All notices served under Article 31 are classed as Prohibition Notices; there is no need to differentiate between a Prohibition or Restriction Notice within the text of the Notice.

The definition between a Prohibition and Restriction Notice are as follows:

- A Prohibition Notice prohibits the use of the whole of a premise or prohibits all uses.

- A Restriction Notice restricts the use of all or part of the premises to specific activities or restricts the numbers of persons who can resort to the whole or part of premises (e.g., maximum of 50 persons in the function room on the first floor).

Article 31 of The Order applies to all premises apart from those listed in Article 6 of the Order. A notice can also be applied to a premise awaiting imminent occupation, such as a pop concert, rave, or parties, where the risk occurs on occupation. A notice under Article 31 of The Order cannot be applied to a “house which is occupied as a single private dwelling”. However, this does not include flats or bedsits in a block, or in a house converted into flats/flatlets, for these properties Article 31 extends its coverage of the Order to allow the notice under the article to cover the whole property including private domestic elements.

## **5.4 RECORDING OF INFORMATION**

### **5.4.1 Public Register**

ECFRS as the enforcing authority will publish and make available to the general public all statutory notices we serve in accordance with The Environment and Safety Information Act 1988 and can be viewed by means of a public register, accessible on the National Fire Chiefs Council website, a link to which is on the Essex County Fire and Rescue Service website. The administration team in the protection department should be informed of all notices served so they can maintain and update the register in accordance with the criteria laid out in the Environment and Safety Information Act 1988.

Information cannot be added to the Public Register for a period of 21 days after service of the notice, as the ‘responsible person’ may appeal the notice to the Magistrates Court during this period.

### **5.4.2 Data Protection**

Essex County Fire and Rescue Service will comply with the principles of the General Data Protection Regulation (GDPR) 2018 and the Data Protection Act 2018 governing the use of personal data received or obtained and will respect the rights and freedoms of those individuals when processing their details.



### **5.4.3 Freedom of Information**

Under the Freedom of Information Act 2000, individuals are given a general right of access to information held by public authorities in the course of carrying out their functions, subject to certain conditions and exemptions. Under Section 19 of the Act, public authorities are required to produce a publication scheme setting out details of the information routinely published or made available, how the information is made available, and whether it is available free of charge.