

Health and Safety Executive		Operational Circular	
		OC 217/06	
Review Date	01/03/2010	Open Government Status	Fully Open
Version No & Date	2: 01/03/2007	Author Unit/Section	Policy Unit

Target Audience:
All HSE Inspectors
HID Fire Surveyors
LA Inspectors

FIRE PRECAUTIONS AND LIAISON BETWEEN HSE/LA INSPECTORS AND FIRE AND RESCUE AUTHORITIES

This OC revises and replaces OC 217/2(Rev). It provides operational guidance for HSE (and where applicable local authority (LA)) inspectors on the enforcement demarcation for workplace fire precautions. It provides updated information on the main general fire safety legislation applicable within Great Britain (substantially revised in 2006) and the interface of this with specific workplace process fire safety legislation. It outlines the enforcement responsibilities of HSE/LA inspectors and fire and rescue authorities (F&RAs), and gives details of the procedures for liaison between the enforcing authorities. The OC also describes the immediate action inspectors should take when dealing with matters of evident concern with respect to general fire safety precautions.

OC 217/5 provides advice for premises/locations where HSE/LAs are the enforcing authority for the Regulatory Reform (Fire Safety) Order 2005 and the Fire (Scotland) Act. 2005

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INTRODUCTION

1 This OC gives guidance on the main fire precautions legislation for which the Department for Communities and Local Government (DCLG), Scottish Executive (SE) and Health and Safety Commission (HSC) are responsible for policy, and on agreed liaison arrangements to be operated between HSE/LA inspectors and F&RAs (definition - see para 9) especially when dealing with matters of evident concern.

2 It includes in Appendix 5, information on the latest general fire safety legislation (including the Regulatory Reform (Fire Safety) Order 2005 (RRO) for England and Wales and the Fire (Scotland) Act 2005, as amended, (F(S)A) for Scotland, both of which come into force on 1 October 2006. This legislation replaces the majority of current legislation dealing with general fire safety including the Fire Precautions Act 1971 and some that was enforced by HSE (for example, the Fire Certificates (Special Premises) Regulations 1976). A particular consequence of the change is to remove the requirement for fire certification. Pertinently, except where specifically stated, the RRO and F(S)A also disapplies HSW Act from applying to general fire safety requirements in the workplace.

3 This OC does not deal with the dissemination of information on premises to F&RAs as covered in OC 317/4 (the Dangerous Substances (Notification and Marking of Sites) Regulations 1990), the Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS), or in accordance with the Health and Safety (Dangerous Pathogens) Regulations 1981.

Important: At premises enforced by the F&RA, if HSE/LA inspectors come across inadequacies in GFPs, which are a matter of evident concern, it is crucial that they inform the F&RA immediately. Paragraphs 22/23/24 refer.

PART I DCLG, SE AND HSC AGREEMENT ON THE DEMARCATION OF RESPONSIBILITIES FOR FIRE PRECAUTIONS

'General' and 'process' fire precautions

4 Legislation distinguishes between the general fire safety requirements in the workplace and specific process related fire safety requirements. The general fire

safety requirements for the workplace are made under the RRO and the F(S)A and are termed 'general fire precautions' (GFP) and in Scotland 'fire safety measures'. This is defined in the RRO and the F(S)A, and is as follows:

- measures to reduce the risk of fire on the premises and the risk of the spread of fire on the premises;
- measures in relation to the means of escape from premises;
- measures for securing, that at all material times, the means of escape can be safely and effectively used;
- measures in relation to the means of fighting fires on the premises;
- measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises;
- measures in relation to the arrangements for action to be taken in the event of fire on the premises, including
 - measures relating to the instruction and training of employees; and
 - measures to mitigate the effects of the fire.

5 The specific process related fire safety requirements are not defined in such an exact manner in the legislation, but the term 'process fire precautions' (PFP) is conveniently used to mean those special, technical or organisational measures required to be taken or observed in any workplace in connection with the carrying on of any 'work process', where those precautions are:

- (designed to prevent or reduce the likelihood of fire arising from such a work process or reduce its intensity; and
- required to be taken or observed to ensure compliance with any requirement of the relevant statutory provisions within the meaning given by section 53 (1) of HSW Act.

6 Where 'work process' means all aspects of work involving, or in connection with:

- the use of plant or machinery; or
- the use or storage of any dangerous substance (as defined under DSEAR).

Specifically PFP are taken to mean those fire precautions defined in the RRO (article 4(2) and (3)) and F(S)A (schedule 2(2)).

7 The term 'PFP' is not confined to industrial premises but includes all relevant work activities and the keeping and use of dangerous substances.

8 Enforcement responsibility for PFP in places of work and in premises where dangerous substances are kept and used remains unchanged and continues to lie with HSE or such other enforcing authorities as determined by the Health and Safety

(Enforcing Authority) Regulations 1998, the Petroleum (Consolidation) Act 1928 (Enforcement) Regulations 1979 and the Manufacture and Storage of Explosives Regulations 2005.

Definition of HSE enforcement responsibility under the RRO (in England and Wales) and the Fire (Scotland) Act (in Scotland)

9 The prime enforcement responsibility for GFP in the majority of places of work rests with the local F&RA. The F&RAs are defined in Section 1 of the Fire and Rescue Services Act 2004 (F&RSA) (for England and Wales) and in Section 1 of the F(S)A (for Scotland). [NB Privately owned fire services such as can be found in some ports and airports are not F&RA and in consequence are not responsible for enforcement of GFP under the RRO or the F(S)A.]

10 In the case of Crown premises, the Crown Premises Inspection Group (CPIG) is responsible for enforcement of GFP in England and Wales and in Scotland it is HM Fire Service Inspectorate (see Appendix 4). At MOD sites the enforcing authority is the Defence Fire Service (DFS).

11 For certain specific premises/locations at which HSE/LAs already deal with GFP under extant legislation, HSE/LAs will become the enforcing authority for the RRO in England and Wales and for the F(S)A in Scotland from October 2006. These premises are:

- any premises for which a licence is required in accordance with section 1 of the Nuclear Installations Act 1965 or for which a permit is required in accordance with section 2 of that Act;
- any premises which would, except for the fact that it is used by, or on behalf of, the Crown, be required to have a licence or permit in accordance with the provisions referred to in the subparagraph above;
- a ship, including a ship belonging to Her Majesty which forms part of Her Majesty's Navy, which is in the course of construction, reconstruction or conversion or repair by persons who include persons other than the master and crew of the ship;
- any workplace which is or is on a construction site within the meaning of regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996 or to which those Regulations apply, other than construction sites referred to in regulation 33 of those Regulations;
- certain sports grounds and certain stands at sports grounds (LA only).

HSE fire surveyors

12 HSE fire surveyors will be available when required to provide technical advice and support to front line inspectors. Contact should be made initially through the team leader of HID S13E. Further information on the role of the fire surveyors can be found in Appendix 6.

Warrant

13 The new fire safety legislation is not a relevant statutory provision under HSW Act therefore inspectors with enforcement responsibilities under the RRO/F(S)A (as specified above) must ensure that they obtain the appropriate warrant from the Human Resources, Recruitment Team.

Enforcement responsibilities

14 The terms 'GFP' and 'PFP' overlap and may affect each other in practice. For example, the means for fighting fire required in connection with the keeping and use of dangerous substances will also form part of the GFP for the workplace. Similarly, the GFP in the workplace may be affected by the presence of the dangerous substances and, for example, improved means of escape in case of fire may be necessary.

15 In most cases it will be clear who should give advice and, if appropriate, take enforcement action. The following examples are given to assist inspectors determine enforcement responsibility.

Enforcement demarcation - examples

16 Plant may be provided with fixed and/or inbuilt fire fighting equipment primarily to limit loss rather than necessarily contribute to life safety. This may be regarded as part of the process fire precautions. Examples include automatic gas flooding systems (e.g. carbon dioxide), which may introduce a risk of suffocation in the event of discharge. It would therefore normally be for HSE to check that this risk is addressed in such installations. Where changes are considered necessary to guard against such risk with equipment required under the RRO or F(S)A, these should be sought in consultation with the F&RA. It is important that any manual operation of such systems is catered for in staff training and staff routines. It is also important that those who may have to fight fires on the premises are familiar with the equipment, which has been provided.

17 On the other hand, an F&RA may assess standards of separation from means of escape for the storage of flammable materials. In such cases the following may be used as a guide to the relative responsibilities of health and safety enforcing authorities and F&RAs:

- If separation or containment of stored materials is required to safeguard the means of escape in case of fire, enforcement will largely be a matter for the F&RA.
- If separation or containment of stored materials is required specifically under RSPs of HSW Act or more generally for fire precautions not directly related to means of escape (e.g. for fire prevention and process control or prevention of the spread of fire), enforcement will be a matter for the HSW Act enforcing authority.
- Where the quantity of dangerous substance present at the workplace is sufficient to pose more than a slight risk, DSEAR Regulation 8 requires the

employer to liaise with the emergency services on emergency arrangements, including providing relevant information (DSEAR AcoP + Guidance document L138 refers). Enforcement of this is a matter for the HSW Act enforcing authority, though it is expected that this would be following liaison and discussion with the emergency services. (NB. Predominantly, though not necessarily exclusively this will be the F&RA).

18 Other than those premises/locations listed in para11 HSE/LA inspectors will not normally inspect GFP during visits to workplaces. However, occasions will arise during the course of visits when inspectors become aware of deficiencies in GFP, which in the light of their knowledge of general safety matters or of fire hazards, are matters of evident concern to them. See para 22 for action to take.

PART II LIAISON BETWEEN HSE REGIONS AND FIRE AND RESCUE AUTHORITIES

19 The overlap of certain responsibilities for fire precautions means that staff from HSE's regional offices and F&RAs should maintain close links to ensure a free exchange of information. HSE regional offices will supply to F&RAs a quarterly list of newly registered premises. HSE inspectors should remember F&RAs interest in process hazards because of their possible effect on GFP in premises; and F&RAs duties to obtain information on premises in their area, to give fire prevention advice when requested, and to attend fires when they occur. HSE inspectors have a clear interest in any requirements that an F&RA may impose concerning GFP, which may affect matters within their responsibilities.

20 Examples of the need for liaison between HSE inspectors and F&RAs are:

- when HSE inspectors become aware of inadequacies in GFP which are matters of evident concern (see Appendix 2);
- when F&RA inspectors become aware of inadequacies in PFP which are matters of evident concern (see Appendix 3);
- when the issue of a prohibition notice, an improvement notice or imposition of a requirement that might affect GFP is being considered by an HSE inspector;
- when the issue of a prohibition notice, enforcement notice, or imposition of a requirement that might affect PFP or any other aspect of safety is being considered by the F&RA;
- to meet requirements for consultation as required by legislation, particularly HSW Act s.23(4); and
- during investigations following a fire where HSE/LA inspectors may have a subsequent enforcement role (i.e. fire may have been caused by inadequacies in PFP).

21 The duty of F&RA under the F&RSA (for England and Wales) and the F(S)A (for Scotland), to make arrangements for giving advice if requested, applies to buildings and other property. HSE/LA inspectors and employers may therefore approach the F&RA for advice on GFP and fire prevention matters.

Action by HSE inspectors in connection with GFP (where HSE is not the enforcing authority for GFP) - matters of evident concern

22 HSE/LA inspectors who become aware of inadequacies in GFPs which are of evident concern, in addition to drawing them to the attention of the duty holder, should also draw them to the attention of the F&RA in the following way:

- where an immediate risk to life appears to be involved, notify the F&RA by telephone (and include a record of this in the visit report) to enable the F&RA to consider issuing a prohibition notice under article 31 of the RRO or section 63 of the F(S)A. The F&RA should inform HSE/LA subsequently of the action decided; and
- where an immediate risk to life is not involved, notify the F&RA in writing.

23 If these matters are within Crown premises, the HSE/LA inspector will forward the notification to the DFS or Fire Service Inspectorate as appropriate. The initiative for any further action to rectify any inadequacy of the GFP then rests with the appropriate authority.

24 If there are significant PFP inadequacies, which overlap with GFP, joint action may be appropriate. However, the initiative for further action on GFP, or liaison with any other enforcing authority concerning this, rests with the other enforcing authority once the matter has been notified as above.

Action by fire and rescue authorities in connection with PFP - evident concern

25 Fire and rescue authorities who become aware of inadequacies in PFP which are of evident concern, should draw them to the attention of HSE in the following way:

- where an immediate risk to life appears to be involved, notify the local HSE office by telephone to enable the HSE inspector to consider taking enforcement action under HSW Act. The HSE inspector should inform the fire and rescue authority subsequently of the action decided; and
- where an immediate risk to life is not involved, notify the local HSE office in writing.

Complaints about fire precautions

26 Complaints about fire precautions should be dealt with as follows:

- If the complaint relates solely to GFP, except where HSE/LA is the enforcing authority, the complainant should be advised to contact their local F&RA unless the workplace is occupied or owned by the Crown. In such circumstances, the complainant should be advised to contact the Crown Premises Inspection Group (CPIG) (see Appendix 4), or in Scotland, HM Fire Service Inspectorate, or DFS in respect of MoD sites. Where such advice to the complainant is impracticable, as in the case of anonymous complaints, or inappropriate, as in the case of complaints where the complainant is liable to be victimised, the HSE recipient should refer the complaint to the relevant

F&RA, or the Chief Inspector of the Fire and Rescue Authorities (the address for HM Fire Service Inspectorates can be found in Appendix 4), as appropriate. In the event that the matter is the responsibility of another enforcing authority, the F&RA or the Fire Service Inspectorate will arrange for the complaint to be passed on; and

- If the complaint relates to PFP, or is one of a number of complaints about a workplace, the complaint should be dealt with in the usual way but any part of the complaint relating to general fire precautions (except where HSE is the enforcing authority for GFP) should be referred to the F&RA or, in the case of premises occupied or owned by the Crown, to CPIG or in Scotland, HM Fire Service Inspectorate.

Consultation requirements under the RRO and F(S)A

27 Article 45 of the RRO requires Building Control Authorities (BCA) to consult the enforcing authority before accepting or requiring alterations to buildings used as a place of work. This will be the HSE/LAs where they are the enforcing authority for the new fire legislation. The procedures for this are covered in the 'Procedural Guidance Document' (OC 217/5). In reality this will be confined to those buildings on nuclear sites (para 52) for which building regulations approval is required.

28 Article 46 of the RRO requires HSE/LAs to consult the enforcing authority for the RRO/F(S)A before making any requirement under HSW Act or relevant statutory provision made under this that may have an affect on the GFP. This echoing the extant requirement for such consultation made by Section 23(4) HSW ACT. There is no equivalent to articles 45 and 46 for Scotland but Section 23(4) of HSW continues to apply in Scotland.

29 Section 64 of the F(S)A requires a F&RA to consult the HSW Act enforcing authority before serving an enforcement notice which would have the effect of requiring an alteration to a workplace. Article 30(5) of the Regulatory Reform (Fire Safety) Order 2005 is the equivalent to Section 64. It has been agreed with the DCLG and SE that when HSE has no comments to make, no response to the F&RA will be necessary. It is therefore essential that any reservations should be expressed to the F&RA promptly i.e. within a maximum of 2 weeks of receipt. If, after expressing a reservation, it is necessary to make enquiries or to take advice, the time taken to prepare comments for submission to the F&RA should not exceed 6 weeks except with the prior agreement of the authority.

30 HSE has a right of appeal to the court if aggrieved by the F&RAs. Under no circumstances should this right of appeal be exercised or referred to in correspondence with a F&RA without prior consultation with Defence, Fire and Police Unit, Public Services Sector (DFP, PSP) (FOD inspectors via Heads of Operations, HID inspectors via HID HQ 1D).

PART III ARRANGEMENTS FOR SPECIFIC SITUATIONS

Premises subject to the Petroleum (Consolidation) Act 1928

31 At premises subject to the Petroleum (Consolidation) Act, HSE/LA inspectors should consult the licensing authority if action is considered necessary that may

affect or be affected by the dispensing of petroleum spirit into the fuel tanks of vehicles etc. The enforcing authority is the petroleum licensing authority. It is the responsibility of the licensing authority to liaise with the F&RA if this impacts on GFP issues. OC 293/5 refers.

Premises subject to the Manufacture and Storage of Explosives Regulations 2005 (MSER)

32 In respect of explosives sites for which HSE is the licensing authority, prior to issuing or varying any site licence the F&RA should be given opportunity to comment. Similarly, the F&RA should notify HSE (ExI) of any action they intend to take in relation to premises to which the explosives licence relates. HSE (ExI) will advise the F&RA at an early stage of the licence/variation application, so that they may comment on matters that affect GFP before the licence is finalised.

33 Where the MSER licence applies only to certain parts of the premises, such as stores or registered premises, which are situated within larger premises, HSE (ExI) inspectors should consult the F&RA if the arrangements for the keeping of explosives may affect or be affected by the GFP in the larger premises. Similarly, the F&RA should notify HSE (ExI) of any action they intend to take in relation to the wider premises, which could affect the area to which the explosives licence relates.

34 At premises licensed or registered under MSER where the police or local authorities are the licensing authority, HSE inspectors should consult the licensing authority if action is considered necessary that may affect, or be affected by, the keeping of explosives. It is the responsibility of the licensing authority to liaise with the F&RA if this could impact on GFP issues.

For Explosives COMAH sites see also paragraphs 50 et seq.

Premises subject to the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 (PFEER)

35 The RRO and F(S)A do not apply to offshore installations within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995. HSE has enforcement responsibility for GFP under PFEER.

Premises subject to the Borehole Sites and Operations Regulations 1995 (BSOR)

36 The RRO and F(S)A do not apply to borehole sites where the above regulations apply. HSE has enforcement responsibility for GFP under BSOR.

Construction sites

37 HSE is the enforcing authority for RRO (in England and Wales) and the F(S)A (in Scotland) at construction sites (as defined by Regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996 (CHSW) that are physically separate or separated premises.

38 The CHSW also gives HSE/LAs powers in relation to general fire safety matters on construction sites. In practice the CHSW fire safety requirements given by Regulations 19 to 21, should be sufficient in most instances for HSE to enforce GFP. However, there may be occasions when the powers of the RRO and F(S)A will be required. Please note that the new CDM Regs are due to be published in Spring 2007 and will include provisions on fire safety which are covered in the CHSW Regs, upon publication of the CDM Regs the CHSW will then be revoked.

39 Where the construction site is contained within, or forms part of premises that remain or become occupied by persons other than those carrying out the construction work or any activity arising from such work, the enforcing authority for the RRO or the F(S)A for the premises containing the construction site is also responsible for enforcing the GFP for the construction site.

40 The GFP requirements in respect of other construction work that is of a minor nature and does not constitute a construction site as defined; e.g. decorating, are covered by the general requirements of the RRO or the F(S)A and responsibility for enforcement rests with the relevant enforcing authority for the premises in which the construction work is being carried out.

41 In relation to such shared occupancy of premises, HSE and LA Inspectors remain responsible for enforcement of PFP matters and issues immediately connected with the work of the construction site (using CHSW Regs). Liaison arrangements between HSE (and LA inspectors) and the F&RAs are discussed in Part II of this OC.

42 HSE is responsible for the enforcement of GFP within the curtilage of the construction site, including accommodation provided in support of the construction activity; e.g. site offices. However, where such accommodation is separated from the construction site by, for example, distance, a road, or being in a separate compound, such that the GFP provision for one is not governed or influenced by the other, the F&RA is responsible for enforcement of GFP under the RRO or F(S)A as appropriate. Such situations are likely to include construction site accommodation compounds that are provided for, but separate from large works of engineering construction, such as bridges, roads and tunnels.

43 Where sleeping accommodation is present within the curtilage of construction sites for which HSE/LAs are responsible for the enforcement of GFP under the RRO or F(S)A, HSE will also be responsible for enforcing the GFP requirement for this. However, the local F&RS have agreed to assist HSE Inspectors if required.

For general fire precautions on construction sites see OC 401/3 and 404/23.

Ships under construction and repair

44 Ship is defined under the RRO and F(S)A as including every description of vessel used in navigation. This is a wide definition that will include small boats and unusual 'vessels' such as mobile offshore installations. HSE is the enforcing authority for GFP on a ship, including a ship belonging to Her Majesty which forms part of Her Majesty's Navy, which is in the course of construction, reconstruction,

conversion or repair by people who include people other than the master and crew of the ship.

45 The RRO and F(S)A do not apply in relation to a ship, in respect of normal shipboard activities of a ship's crew, which are carried out solely by the crew under the direction of the master. This is consistent with the disapplication to ships in most HSE regulations and is invariably most relevant to ship repair by the crew.

Shipbuilding and boat building

46 For larger vessels, modern ship construction techniques can involve modular construction, and fabrication usually takes place in a shed and is essentially the same as other large-scale fabrication and GFP will therefore fall to the local F&RA. The modules or blocks are transported to an assembly location that may be a slipway or dry dock. HSE becomes the enforcing authority for GFP at the point where assembly is started. For vessels of non-modular construction HSE becomes the enforcing authority when fabrication of the hull and its fitting out has started. HSE remains the enforcing authority for GFP for the fitting out stage and after launching. The Marine and Coastguard Authority is responsible for enforcing all safety legislation for work carried out on sea trials etc whether this is done by crews or shore based workers or both.

Ship and boat repair

47 A ship or boat that is under repair, refit or conversion should be self-evident. HSE will enforce GFP in relation to work on or in the vessel.

Shipbreaking/dismantling

48 The F&RA has enforcement responsibility for GFP and HSE for PFP.

Docks including loading and unloading of ships

49 Responsibility for enforcement of GFP in docks, harbour areas etc., including embarkation and disembarkation from ships etc. rests with the local F&RA (or CPIG in respect of such situations at Crown premises). HSE will enforce PFP measures under DSHAR. The requirement for a means of escape in regulation 27(1)(b) of the Dangerous Substances in Harbour Areas Regulations 1987 (DSHAR) is not only for the purpose of escaping from fire. There are other risks involving dangerous goods, which might require a safe means of escape, e.g. the accidental release of vinyl chloride monomer from a ship. The provisions of the RRO will therefore not disapply regulation 27(1)(b) at berths where there are risks other than fire.

(Refer to advice for 'COMAH Sites' in respect of docks and harbour areas within Top-Tier COMAH premises.)

COMAH Sites

50 The F&RA has enforcement responsibility for general fire precautions (GFP) at all COMAH premises. However, COMAH, which also potentially covers GFP in respect of major accidents, will still apply at such sites as it is excluded from the general disapplication of HSW ACT in the RRO (Article 47 refers) and the F(S)A

(Section 70 refers). The effect of this, in respect of Top-Tier (TT) COMAH sites, is to allow the COMAH Competent Authority to retain the power to assess whether the Safety Report shows that GFP arrangements have been demonstrated to limit the consequences of a COMAH major accident. General fire precautions (GFP) generally cover all arrangements for the safe evacuation of persons from fires to ensure their safety. This includes evacuation from process plant, installations, warehouses, control rooms, offices and other buildings or process areas. Further details of General Fire Precautions are given in Appendix 2. Although it is expected that the local Fire & Rescue Authority will carry out planned inspection and reactive investigation of general fire precautions. HSE HID Inspectors may come across matters of evident concern for general fire precautions during their normal activities and they should bring these to the attention of the local F & RA. Process fire precautions (PFP) generally cover all measures necessary under regulation 4 of COMAH to: a) prevent fire and explosion major accidents occurring on an installation; and b) to mitigate and reduce the exposure of persons to harm from fire and explosion arising from major accidents. Further details of Process Fire Precautions and matters of evident concern are given in Appendix 3. Although it is expected that the HSE HID Inspectors will carry out planned inspections and reactive investigation of process fire precautions. Local F&RA officers may come across matters of evident concern for process fire precautions during their normal activities and they should bring these to the attention of HSE HID Inspectors. Where GFPs and PFPs overlap, for example because a safety measure is both a General and Process Fire Precaution as defined in appendices 2 and 3: the local F&RA shall take primary enforcement of the measure under the RRO. Where the local F&RA considers it necessary, it should consult HSE HID Inspectors for advice: for example, if there is a conflict between a potential GFP and a PFP or other health and safety issue. In such cases, the solution that contributes most to the safety of relevant persons should take precedence. The local F&RA shall advise COMAH site operators – for top-tier sites only – to review the site's safety report for significant changes requiring notification to HSE, whenever it requires changes to the General Fire Precautions. When COMAH sites have major shutdowns and other construction works covered by the Construction Design and Management (CDM) Regulations 1994, the segregated CDM site is a construction site for the purposes of the RRO regulations. Consequently, in this case, both the GFP and the PFP will be enforced by HSE.

Note. The need for the safety report arrangements arises because the adequacy of GFP on TT COMAH sites was previously demonstrated in the Safety Report (SR) by reference to the Fire Certificate (issued either under the FC(SP)R or FPA). With the removal of the certification regime, demonstration of the adequacy of the GFP may in future be made by the duty-holder referencing their Fire Safety Risk Assessment required under RRO (F(S)A in Scotland), in the SR as a separate document and confirming that the Fire Safety Risk Assessment has been reviewed by the F&RA or is undergoing discussion with the F&RA. Lower tier COMAH sites only need to refer to the Fire Safety Risk Assessment in their MAPP and related SMS documentation.

HSE inspectors may also wish to impose requirements under COMAH that may cause variation to the GFP provision. In circumstances where this occurs, HSE Inspectors should consult with the F&RA prior to issuing a prohibition notice, improvement notice, or imposing any requirement that may affect the GFP. In

relation to sites subject to the Control of Major Accident Hazards Regulations 1999 (COMAH) and the RRO; the HSC is satisfied that enforcement of General Fire Precautions should be performed solely by the local F&RA.

The new legislation is not intended to cover PFP, i.e. those special measures taken in connection with any work process, which are designed to prevent or reduce the risk of fire from the use of plant or from machinery or from the storage of any dangerous substance; HSW Act covers this (see section 1(1) (C)). The fire safety legislation disappplies the HSW Act and any regulations made under the Act, in respect of GFPs in relation to premises to which it applies, and where requirements could be imposed through the order or the Act. One exception to this disapplication is premises subject to the Control of Major Accident Hazards Regulations 1999 (COMAH). In order to ensure that the demarcation between HSE and the F&RA is maintained, liaison arrangements for COMAH premises outlined in this OC and mirrored in the F&RA internal guidance should be observed.

51 For TT COMAH sites, prior to taking any action in respect of GFP, the F&RA should request the duty-holder to review the potential impact of this proposal on their Safety Report. Where this identifies the need for a significant review of the SR, the duty-holder should notify the COMAH Competent Authority of the proposal for their consideration in liaison with the F&RA. HSE will undertake any necessary liaison with the EA in England & Wales, or SEPA in Scotland.

N.B. COMAH is enforced by a joint Competent Authority, HSE and the Environment Agency (EA) in England and Wales and HSE and the Scottish Environmental Protection Agency (SEPA) in Scotland.

Nuclear Licensed Sites

52 HSE (NSD) is responsible for the enforcement of GFP under the RRO and the F(S)A within the boundary of the licensed site.

Sites occupied by the Ministry of Defence (MOD)

53 The Defence Fire and Rescue Service (DFRS) is responsible for enforcing the RRO/FSA at MOD sites with the exception of shipbuilding and ship repair activities. However, HSE has enforcement responsibilities for nuclear-licensed enclaves on such sites, for those areas that would be licensed if it were not for the fact that they are Crown premises, and for shipbuilding and ship repair.

MOD sites containing a nuclear licensed enclave

54 There are three potential enforcement agencies for fire safety on such sites - HSE, local fire and rescue authority (F&RA) and DFRS. The basis for enforcement demarcation on general fire precautions is:

- Nuclear-licensed area - NSD
- Areas that 'would be licensed' - bulk storage/ handling/ processing of nuclear matter, e.g. X-berths (operational/ refitting) - NSD

- Non-nuclear ship building/ ship repair - FOD
- Z-berths - F&RA
- Remaining areas, including construction sites, accommodation units and sports complexes for forces personnel - DFRS

Agreeing enforcement demarcation

55 Where it is not possible to physically define all such areas, local agreements between the enforcing authorities may have to be drawn up for each site linked to a site plan. These agreements should be based on the letter of understanding between HSE and DFRS, which is reproduced in Appendix 7 **[still awaiting agreement to be finalised]**. The letter describes the procedures in cases where agreement on enforcement demarcation cannot be reached locally. However please be aware that Scottish F&RAs only enforce fire safety legislation for Z berths which fall within their area (where this extends into the sea, the F&RA's seaward boundary is the low water mark) and those which are not on MoD property are the responsibility of the Defence Fire and Rescue Service.

Premises subject to the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR)

56 The RRO (and the F(S)A & associated Regulations incorporates substantial sections copied from DSEAR. However, it is confirmed that HSE or LA's will enforce PFP in premises subject to DSEAR and F&RA will enforce GFP (subject to the agreements detailed above for specific premises).

Crown premises - including matters of evident concern

57 The principles of the advice in Part II apply also to premises (or parts of premises) occupied or owned by the Crown, except that for such premises (or parts) liaison should be with the CPIG of HM Fire Service Inspectorate, or in Scotland the appropriate enforcement officers of HM Fire Service Inspectorate. There are restrictions on enforcement imposed by HSW Act s.48 and Article 49 of the RRO and Section 77 of the F(S)A in relation to Crown premises; but if HSE inspectors observe matters of evident concern where an immediate risk to life appears to be involved because of inadequate GFP they should telephone CPIG, or in Scotland the appropriate member of the Inspectorate. In such cases HM Fire Services Inspectorate will be responsible for any necessary advisory action or for liaison with the appropriate Government Department. If there is any difficulty in making contact, the facts should be reported by telephone to the CPIG or HM Fire Service Inspectorate in Scotland as the case may be. Contact details are given in Appendix 4.

CANCELLATION OF INSTRUCTIONS

58 OC 217/2 (rev) **-cancel and destroy.**

Date first issued: 28 September 2006

APPENDIX 1
(PARA 18)

RELEVANT STATUTORY PROVISIONS OF HSW ACT CONTAINING
PARTICULAR FIRE SAFETY PROVISIONS

Petroleum (Consolidation) Act 1928
Mines and Quarries Act 1954 (ss.73 and 115)
The Coal Mines (Cardox and Hydrox) Regulations 1956 (reg.2)
The Coal Mines (Firedamp Drainage) Regulation 1960 (regs.12 and 13)
Dangerous Substances in Harbour Areas Regulations 1987
Chemicals (Hazard Information and Packaging for Supply) Regulations 1994 as amended
Construction (Health, Safety and Welfare) Regulations 1996
Docks Regulations 1988
Control of Industrial Major Accident Hazards Regulations 1999
Dangerous Substances and Explosive Atmospheres Regulations 2002
Manufacture and Storage of Explosives Regulations 2005

APPENDIX 2
(PARAS 22-24)

MATTERS OF EVIDENT CONCERN IN CONNECTION WITH GENERAL FIRE
PRECAUTIONS

The matters listed below are intended as illustrations of matters which might cause an inspector evident concern. Such matters may be self-evident or may be drawn to an inspector's attention, e.g. by a safety representative. Inspectors are not expected to make inquiries to seek information on such matters.

Means of escape in case of fire

- Fire exits which cannot be easily and immediately opened from the inside, e.g. by panic bolts, or other suitable emergency fastening.
- Significantly obstructed exit doors, passageways, gangways or staircases.
- Open stairways in multi-storey buildings containing significant quantities of flammable materials.
- The keeping of dangerous substances, e.g. flammable materials in locations or circumstances such that they may prejudice the means of escape in case of fire.
- Significant breaches of fire-resisting enclosures, such as missing or permanently open fire doors on escape routes.

Means for fighting fire

The absence, or clearly inadequate provision or maintenance, of fire extinguishers or other equipment for general fire-fighting purposes.

Fire alarms

Lack of a fire alarm in a large building or in a building where there are significant quantities of explosive or highly flammable materials where the building, or a substantial part of it, is not licensed by HSE under the Manufacture and Storage of Explosives Regulations 2005.

Fire alarms that are not in working order.

Fire routine and staff training and fire risk assessments

Absent, or clearly inadequate, fire routine procedures and staff training in the actions to take in the event of fire.

ABSENT OR CLEARLY INADEQUATE FIRE RISK ASSESSMENTS.

APPENDIX 3 (PARA 25)

MATTERS OF EVIDENT CONCERN IN CONNECTION WITH PROCESS FIRE PRECAUTIONS

These examples are illustrative of deficiencies involving dangerous substances on which F&RA may consider liaison with HSE/LA inspectors is necessary. The list is not intended to be exhaustive.

- Extremely and/or highly flammable liquids: clearly unsatisfactory conditions of storage or use; lack of control of solvent fume; poor control of sources of ignition; substantial spillages of any highly flammable liquid.
- Gas cylinders containing flammable gases: clearly unsatisfactory conditions of storage or use; poor control of sources of ignition; substantial escape of any flammable gas.
- Hot work on vessels which have contained dangerous substances and which have not been adequately cleaned.
- Flammable gas generation or compression plant situated inside buildings.
- Substantial quantities of polyurethane foam in workrooms.
- Excessively dusty conditions involving combustible dusts.
- Excessive deposits of combustible solids or liquids. Examples include cooking oils and fat in and around extraction ductwork in catering establishments and lubricating oils and grease around machinery.
- Radioactive substances, which are high fire risks: unsatisfactory conditions of storage and use. This category might include certain highly flammable liquids, which have radioactive properties.

APPENDIX 4
(PARA 26)

ADDRESSES OF INSPECTORS OF FIRE SERVICES WITH RESPONSIBILITIES
FOR GENERAL FIRE SAFETY AT CROWN PREMISES

Office address	Areas covered
HM Fire Service Inspectorate Crown Premises Inspection Group Allington Towers 5th Floor Allington Street Victoria LONDON SW1E 5WY 0207 944 5578 CPIG@odpm.gov.uk	England and Wales
HM Fire Service Inspectorate for Scotland Area 1R St Andrews House Regent Road EDINBURGH EH1 3DG Fax: 0131 244 2564	Fife Grampian East Highland Orkney & Shetland Isles Lothian and Borders Tayside Tel: 0131 244 2339
	Central Dumfries and Galloway Strathclyde West Highland & Western Isles Tel: 0131 244 2336

If there is any difficulty in contacting members of the Fire Service Inspectorate, assistance may be obtained by telephoning 0207 944 5789 for England and Wales and 0131 556 8400 for Scotland.

APPENDIX 5
(PARA 2)

FIRE SAFETY LEGISLATION

General

1 A number of Government Departments deal with fire safety policy, legislation and its enforcement. Those principally concerned are the Department for Communities and Local Government and the Scottish Executive, who have the policy lead on general fire precautions (GFP) and, because of their responsibility for building

regulations, the Building Regulations Division of DCLG and the Scottish Building Standards Agency. The Department for Transport and the Scottish Executive Enterprise, Transport and Lifelong Learning Department also have responsibility for roads, tunnels and bridges etc. The Department of Trade and Industry lead on consumer safety and protection. The Department of Work and Pensions, in England and Wales, as advised by HSC, have the lead responsibility for process fire precautions (PFP).

2 HSC's functions derive from HSW Act whose comprehensive general purposes and duties of care include protection of persons from fire hazards. Appendix 1 lists the relevant statutory provisions (RSPs) of HSW Act containing particular fire safety provisions. In view of its statutory duty to make arrangements for the general purposes of HSW Act, HSC has undertaken to satisfy itself that, where HSW Act and other legislation overlap, or where two authorities can enforce the same legislation, enforcement arrangements between HSE and other enforcing authorities are, and remain, effective.

3 Many local authority general acts in England and Wales contain provisions relating to fire, but most include savings clauses in respect of HSW Act and the RRO related to the application of specified sections and the powers for repeal and modification contained in HSW Act s.80.

Department for Communities and Local Government (DCLG) and Scottish Executive (SE) new fire safety legislation

4 DCLG is responsible for the new fire safety legislation for England and Wales:

- The Fire and Rescue Services Act 2004; and,
- The Regulatory Reform (Fire Safety) Order 2005.

5 The SE is responsible for the new fire safety legislation for Scotland:

- The Fire (Scotland) Act 2005; and,
- The Fire Safety (Scotland) Regulations 2006.

Scope of the legislation

6 The new fire safety legislation (listed above) replaces previous fire safety legislation including the Fire Services Act 1947, the Fire Precautions Act 1971, the Fire Precautions (Workplace) Regulations 1997 (FP(W)R), and the Fire Certificate (Special Premises) Regulations 1976 (FC(SP)R). Any fire certificates issued under the Fire Precautions Act or the FC(SP)R will cease to have effect when the RRO comes into force in England and Wales and when the F(S)A comes into force in Scotland.

7 The main purpose of the new legislation is to deliver a modernised Fire and Rescue Service. It places greater emphasis on fire prevention and recognises the wider role of the Service beyond firefighting duties and includes rescues from road

traffic accidents, responding to serious environmental disasters such as flooding and the threat of terrorism.

8 The new legislation addresses 'general fire safety precautions' and other fire safety duties, which are needed to protect people in case of fire in and around most premises. It requires a fire safety risk assessment to be undertaken and appropriate fire precautions to be put in place on the basis of the results of the assessment to prevent fire and protect those on, or in the immediate vicinity of the premises, from harm caused by fire.

9 The new legislation is not intended to cover PFP, i.e. those special measures taken in connection with any work process, which are designed to prevent or reduce the risk of fire from the use of plant or from machinery or from the storage of any dangerous substance; this is covered by the HSW Act (see section 1(1)(c)). In order to ensure that the demarcation between HSE and the F&RA is maintained, liaison arrangements outlined in this OC and mirrored in the F&RA internal guidance should be observed.

10 The fire safety legislation disapplies the HSW Act and any regulations made under the Act in respect of GFPs in relation to premises to which it applies, and where requirements could be imposed through the Order or the Act. Exceptions to this are (i) where HSE/LA is the enforcing authority for GFPs (see para 11 and Part III) and (ii) premises subject to the Control of Major Accident Hazards Regulations 1999 (see Part III).

Duties under the legislation

11 The new legislation addresses 'general fire safety precautions' and related fire safety duties, which are needed to protect people in case of fire in and around most non-domestic premises.

12 The legislation requires a fire safety risk assessment to be carried out (although this can be done as part of the health and safety risk assessment but should be clearly distinguishable) and that it is reviewed regularly. It requires that action be taken to reduce or remove risks and that fire precautions are put in place to protect against any remaining risks. Where there are 5 or more employees the significant findings of the risk assessment and any measures taken to address the findings of the assessment should be recorded.

13 Responsibility for complying with the new legislation rests with the 'responsible person' in England and Wales and in Scotland, ' a person who "has control to any extent" of the premises'. In a workplace this is the employer and any other person who may have control of any part of the premises, e.g. the occupier or owner. Where there is more than one 'responsible person' (or in Scotland 'person who has "control to any extent" of the premises') they must take reasonable steps to work together.

14 The new fire safety legislation applies to most non-domestic premises, including most workplaces (this includes self-employed premises and voluntary organisations). It protects everyone who uses the premises including non-employees and members of the public (e.g. hospital patients, residents in care homes, and visitors to these types of premises).

15 The fire safety legislation does not apply to domestic premises; offshore installations; certain ships; certain woods, fields and other land; aircraft; locomotive or rolling stock; mines; and boreholes (for full list see article 6 of the RRO or section 78 of the F(S)A).

Powers of inspectors

16 In most premises the local F&RA enforces the new fire safety legislation. HSE/LA is the enforcer at certain premises (these are detailed in para 9 of the main OC). The new fire safety legislation gives the enforcing authority powers to:

- Inspect premises to check compliance;
- Issue an enforcement notice;
- Issue a prohibition notice;
- Issue an alterations notice (in the case of high risk premises) requiring notification of proposed changes to the premises (including services, fittings, equipment, quantities of dangerous substances present, or the use of the premises) which may result in a significant increase in risk.

APPENDIX 6 (PARA 12)

THE ROLE OF THE FIRE SURVEYOR

The role of the fire surveyor will be to provide technical support to the front line inspectors responsible for the inspection of premises for which HSE has enforcement responsibility under the new fire safety legislation. This support will take the form of providing advice to inspectors and the industry on what is good practice, carrying out site audits of fire safety management systems, taking part in team inspections with front line inspectors, assisting with the training of inspectors, and commenting on plans for new buildings. Front line inspectors whether in NSD or FOD will be responsible for enforcement. In this sense their role will remain unchanged. Front line inspectors will continue to need to have sufficient understanding of general fire precautions to fulfil this role. Although it is expected that planned inspections of general fire precautions will be carried out by fire surveyors, front line inspectors will need to be able to identify and deal with matters of concern in relation to general fire precautions that they come across during their normal inspectoral activities. It is expected that the fire surveyors will have a major role in reviewing and commenting on the risk assessments and fire safety arrangements required by the new law.

APPENDIX 7

AGREEMENT RELATING TO ENFORCEMENT DEMARCATION

[Awaiting narrative based on the letter of understanding between HSE and DFRS]