

|                                    |               |                               |             |
|------------------------------------|---------------|-------------------------------|-------------|
| <b>Health and Safety Executive</b> |               | <b>Operational Circular</b>   |             |
|                                    |               | <b>OC 217/05</b>              |             |
| <b>Review Date</b>                 | 12/03/2009    | <b>Open Government Status</b> | Fully Open  |
| <b>Version No &amp; Date</b>       | 4: 12/03/2007 | <b>Author Unit/Section</b>    | NSD Unit 1A |

Target Audience:  
HID Fire Surveyors  
NSD Inspectors  
Construction and Shipbuilding Inspectors

## **REGULATORY REFORM (FIRE SAFETY) ORDER 2005**

### **FIRE (SCOTLAND) ACT 2005**

#### **GENERAL ENFORCEMENT GUIDANCE AND ADVICE**

This OC gives guidance to inspectors on enforcement of Regulatory Reform (Fire Safety) Order 2005 (RR(FS)O) and Fire (Scotland) Act 2005 (F(S)A) in premises where HSE has enforcement responsibilities - nuclear, shipbuilding and construction, but see more detail below. It should be read in conjunction with OC 217/6, which gives guidance on the interface between HSE/LA inspectors and the Fire and Rescue Authorities.

The intention of this OC is twofold:

- to provide guidance to HSE inspectors in Nuclear, Shipbuilding and Construction industries, where the responsibility for administering the RR(FS)O/F(S)A is retained by HSE, and
- to provide relevant information regarding their interface between HID specialist fire surveyors and the other Inspection groups.

#### **CONTENTS**

##### **Paragraphs Headings**

|       |                         |
|-------|-------------------------|
| 1-4   | Introduction            |
| 5     | Summary of Main Changes |
| 6-11  | Guidance                |
| 12-13 | HSE's role              |
|       | Enforcement Provisions  |
| 14    | • Warrants              |
| 15-16 | • Powers of inspectors  |
| 17    | • Notices               |
| 18    | • Alterations notices   |

|         |   |
|---------|---|
| 20      | • Enforcement notices   |
| 21-22   | • Prohibition notices   |
|         | Enforcement   |
| 23-25   | • Imminent danger   |
| 26      | • EMM   |
|         | • EMM Benchmarks/Initial Enforcement Expectations   |
| 27-31   | • Determining the Risk Gap  |
| 32-35   | • Determination of Likelihood   |
| 36      | HSE Arrangements for Enforcement  |
| 37-39   | • Role of HID fire surveyors  |
| 40      | • Standard forms for notices  |
|         | • Considerations specific to NSD  |
| 41      | • Conflict with security of nuclear safety requirements   |
| 42-43   | • Complex sites including decommissioning sites and Naval dockyards   |
| 44-48   | • Considerations specific to ships under construction or repair   |
| 49      | Definitions   |
| 50      | • Responsible person  |
| 51-52   | • Competent person  |
| Annex 1 | Equivalence of provisions RR(FS)O and F(S)A   |
| Annex 2 | Examples for risk gap assessment for EMM  |
| Annex 3 | Procedural note for the submission of application for the determination of a dispute under section 67 of the Fire (Scotland) Act 2005 |

---

## INTRODUCTION

1 The Regulatory Reform (Fire Safety) Order 2005 (RR(FS)O) in England and Wales and Fire (Scotland) Act 2005 are due to come into force on 1 October 2006. The objective of the RR(FS)O/F(S)A is to consolidate the general fire safety precautions of a large number of pieces of legislation, which are revoked. This includes the Fire Certificate (Special Premises) Regulations 1976, thus removing the requirement for fire certificates. In general the legislation places responsibility for enforcing general fire precautions on the local Fire Authorities. However responsibility for enforcement is retained by HSE for nuclear, shipbuilding and construction, see detailed definitions below. Although there are detailed differences between the RR(FS)O and the F(S)A, the fundamental requirements are

generally paralleled between the two documents. For brevity all specific quotations are taken from the RR(FS)O. Annex 1 provides a summary of equivalent articles for the two pieces of legislation.

2 The legislation disapplies HSWA 1974 in regard to general fire safety requirements in the work place except at premises:

- where HSE or the local authority is the enforcing authority for the RR(FS)O/F(S)A, or
- in relation to the COMAH regulations 1999.

3 The RR(FS)O/F(S)A is not a Relevant Statutory Provision under HSWA 1974. Therefore, even in those workplaces where HSE is the enforcing authority, HSE inspectors cannot enforce the new legislation under their HSWA powers. Consequently it is necessary for warrants to be revised for the relevant inspectors to accommodate the RR(FS)O/F(S)A. In addition the legislation introduces different enforcement tools, summarised below. Although these have significant similarities with those available under HSWA 1974, it is expected that inspectors should give preference to use the RR(FS)O/F(S)A legislation in regard to fire safety.

4 In line with what is regarded as best practice, a risk-based approach is required under the RR(FS)O/F(S)A, thus the style of demonstration of safety is changed fundamentally from the prescriptive process under the Fire Certificate (Special Premises) Regulations (FC(SP)R). However it is anticipated that safety provisions that were acceptable under the FC(SP)R will generally remain acceptable under the RR(FS)O/F(S)A. It is likely that the nuclear licensees will produce similar fire "certificate" layouts as a means to informing their risk assessments. It is also worth noting that the Fire Precautions (Workplace) Regulations 1999 (as amended) have provided for a risk-based approach for some time, so duty holders and HID fire surveyors are likely to be familiar with the relevant concepts. The shipbuilding and ship repair industries have traditionally used a risk-based approach to controlling the risk of a fire.

#### SUMMARY OF MAIN CHANGES

5 The RR(FS)O/F(S)A introduces a risk-based approach, in contrast to the prescriptive requirements associated with the special premises regulations (FC(SP)R). This requires the Responsible Person to carry out a risk assessment to demonstrate that the fire safety precautions are adequate. Principles of prevention are identified in the RR(FS)O/F(S)A that are similar to generic risk assessment guidance - avoidance, replacing dangerous by less dangerous materials, provision of protective measures etc. Some of the important aspects are summarised here:

**ARTICLE 4** - Provides the meaning of "general fire precautions"

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

**ARTICLE 9** - Requires the responsible person to make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions he needs to take to comply with the requirements and prohibitions imposed on him by or under the RR(FS)O/F(S)A.

**ARTICLE 10** - outlines the approach to be followed in providing general fire precautions:

- a. avoiding risks;
- b. evaluating the risks which cannot be avoided;
- c. combating the risks at source;
- d. adapting to technical progress;
- e. reducing the dangerous by the non-dangerous or less dangerous;
- f. developing a coherent overall prevention policy which covers technology, organisation of work and the influence of factors relating to the work environment;
- g. giving collective protective measures priority over individual measures; and
- h. giving appropriate instructions to employees.

**ARTICLE 11** - The responsible person must make and give effect to such arrangements as are appropriate, having regard to the size of his undertaking and nature of its activities, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures. The arrangements must be recorded if there are more than five employees.

**ARTICLE 13** - Where necessary, to the extent that it is appropriate, the responsible person must ensure that the premises are equipped with fire-fighting equipment, fire detectors and alarms etc.

**ARTICLE 14** - Where necessary in order to safeguard the safety of relevant persons, the responsible person must ensure that routes to emergency exits are kept clear at all times. Emergency exits must lead as directly as possible to a place of safety, 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 routes and exits must be indicated by signs and adequate emergency lighting must be provided.

**ARTICLE 17** - Requires a suitable maintenance regime to ensure relevant equipment is kept in an efficient state.

**ARTICLE 18** - Requires the responsible person to appoint one or more competent persons to assist in undertaking the preventive and protective measures.

**ARTICLE 21** - Requires the responsible person to provide adequate safety training.

**ARTICLE 23** - Places a duty on employees to take reasonable care and co-operate with his employer regarding compliance with the requirements imposed by the RR(FS)O/F(S)A.

**ARTICLE 26** - Requires the enforcing authority to enforce the provisions of the Order and any regulations made under it.

**ARTICLE 27** - Details powers of Inspectors under the RR(FS)O/F(S)A, including power of entry, to make enquiries, to identify the responsible person, to require production of information and records and take copies thereof, to take samples of articles and substances to ascertain their fire resistance, to remove or have dismantled dangerous articles etc.

**ARTICLE 29** - Provides for the enforcing authority to serve a notice, referred to in the Order as "an alterations notice", which may be used to formalise a requirement from the enforcing authority.

**ARTICLE 30** - Provides for "enforcement notices" to be issued by the enforcing authority to the responsible person if the authority considers that any provisions of the Order or regulations made under it have not been complied with. Such notices may provide optional directions as to relevant measures to be adopted and must allow at least 28 days for the remedy to be

adopted. Note that specific consultees are identified if an enforcement notice requires a person to make alterations to premises.

**ARTICLE 31** - Provides for "prohibition notices" to be issued if the risk is considered to be sufficiently serious. Such notices may have immediate effect if the authority is of the opinion that the risk of personal injury is imminent. As with enforcement notices options for compliance may be included.

**ARTICLE 32** - States that it is an offence (for any person identified in Article 5) not to comply with the requirements of Articles 8 to 22 (and others).

## GUIDANCE

6 There are no relevant ACOPs or other published HSE guidance regarding the RR(FS)O/F(S)A. However Operational Circular 217/6 outlines the interface between HSE/LA Inspectors and fire and rescue authorities. OCs 401/3 and 401/4 provide guidance in regard to fire safety standards in construction and in temporary accommodation on construction sites respectively. The Fire and Rescue authorities and the Chief Fire Officers Association (CFOA) have published guidance for their administration of the RR(FS)O/F(S)A where they are the enforcing authority. Guidance is being provided on the DCLG Website. The Scottish Executive is producing similar guidance for Scotland.

7 OC 217/6 Fire Precautions and Liaison Between HSE/LA Inspectors and Fire and Rescue Authorities.

8 OC 401/3 The Enforcement of Fire Safety Standards During Construction Work.

9 OC 401/4 Enforcement of General Fire Precautions in Temporary Accommodation Units on Construction Sites.

10 CFOA Guidance

11 Guide to Fire Safety in Factories and Warehouses, DCLG

## HSE's ROLE

12 HSE remain the primary enforcing authority for:

- i. 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 under section 2 of the Act.
- ii. 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 (i) above.

- iii. 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 repair by persons other than the master and crew of the ship and
- iv. any workplace which is a construction site within the meaning of regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996 other than construction sites referred to in regulation 33 of those Regulations.

13 Other authorities, such as the Fire and Rescue Authorities or MoD Fire Service, have the responsibility of enforcement in all other sectors, as defined in Section 1 of the Fire and Rescue Services Acts 2004 for England and Wales and Section 1 of the F(SA) for Scotland.

## ENFORCEMENT PROVISIONS

### Warrants

14 Article 27 (2) states that an inspector, if so required when visiting any premises in the exercise of powers conferred by the article, produce to the occupier of the premises evidence of his authority. Therefore all individuals enforcing the RR(FS)O/F(S)A will require to hold a warrant identifying that they have the necessary authority. Warrants issued prior to the introduction of the new legislation will be modified before the holder can enforce the RR(FS)O/F(S)A.

### Powers of Inspectors

15 Article 27 summarises the powers available to an inspector for carrying out the Order. These include the power to enter premises, make enquiries, require the production of information and records, take copies of any records and to require the person having responsibility for the premises to provide facilities and assistance to enable the inspector to exercise such powers. Article 27(f) confers the power to have an article dismantled or a substance processed if in the inspector's opinion they are likely to cause danger to relevant persons. In such cases the inspector has a responsibility to consult any responsible persons present and allow them to remain present if they request to.

16 It should be noted that the power to issue notices (discussed below) is vested in the enforcing authority rather than the individual inspector. Inspectors will be authorised by the Executive to issue notices, as confirmed by the issue of a revised warrant.

### Notices

17 The options available for enforcement action are those described in articles 29, 30 and 31, as summarised above. Under article 32 it is an offence

for any responsible person to fail to comply with appropriate enforcement action, and the onus is on the accused to prove that it was not reasonably practicable to do more than was done to satisfy the requirement. There is a right to appeal (to court, within 21 days). Except for Prohibition Notices, an appeal automatically suspends the relevant notice until it has been dealt with by the court.

### **Alterations notices**

18 Effectively Alterations Notices formalise the interface between the enforcing authority and the duty holder, where necessary. They are not regarded as routine and are only likely to be used on rare occasions when the responsible person does not voluntarily accept a need for a specific requirement. An alterations notice may only be served if it is in the opinion of the enforcing authority that the premises -

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

19 An alterations notice must state -

- a. that the enforcing authority is of the opinion referred to above and
- b. specify the matters which constitute the risk.

### **Enforcement notices**

20 Enforcement Notices are a direct parallel with Improvement Notices. They provide a means to enforce improvement where the enforcement authority is of the opinion that the responsible person has failed to comply with any provision of the Order. An enforcement notice must -

- a. state that the enforcing authority is of the above opinion;
- b. specify the provisions which have not been complied with; and
- c. require the responsible person to remedy the failure within such period from the date of service of the notice (not being less than 28 days) as may be specified in the notice.

### **Prohibition notices**

21 If the enforcing authority is of the opinion that the use of premises involves or will involve a risk to relevant persons so serious that the use of the premises ought to be prohibited, or restricted, the authority may serve on the responsible person a prohibition notice, which must -

- a. state that the enforcing authority is of the opinion referred to above;
- b. specify the matters which in their opinion give or, as the case may be, will give rise to the risk; and
- c. direct that the use to which the prohibition notice relates is prohibited or restricted to such an extent as may be specified in the notice until the specified matters have been remedied.

22 A prohibition notice may include directions as to the measures which will have to be taken to remedy the matters and offer a choice between different ways of remedying the matters.

## ENFORCEMENT

### **Imminent danger**

23 Where there is a potential for serious risk all Inspectors have a responsibility to ensure that the risk is appropriately mitigated immediately. It is not appropriate to provide a detailed definition of imminent danger, in order to enable inspectors to use their discretion. However examples would include:

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

24 In most cases, the responsible person would be expected to adopt an appropriate course of action immediately the situation is brought to their attention. Where the responsible person is not inclined to co-operate a prohibition notice, as empowered by article 31 must be issued before the Inspector leaves the premises.

25 Where an Inspector identifies an aspect of imminent and serious concern they should take immediate action to remove or mitigate the concern, including consideration of issuing a Prohibition Notice as discussed above. They should, if possible, consult the HID Fire Surveyors in HIDS13E before

taking such action. If this is not possible they should advise the HID Fire Surveyors of such action as soon as possible after the event.

## EMM

26 As with all legislation enforced by HSE, inspectors must follow the HSC Enforcement Policy Statement and the EMM in deciding on regulatory action. The information below is intended to be read in conjunction with the EMM to provide consistency and proportionality of action.

### EMM Benchmarks/Initial Enforcement Expectations

#### Determining the Risk Gap

27 The failure to have adequate general fire precautions can result in injuries covering the whole range from fatal to minor, and this has to be taken into account when determining the risk gap. The benchmark standard should normally be that the likelihood of serious personal injury is nil/negligible.

28 EMM Table 1 has been amended to reflect the consequences associated with injury as a result of fire/smoke within a building. Injuries can arise from physical injuries during escape and are not necessarily limited to the effects of fire and smoke.

**Table 1 - Amended EMM Table**

| Injury                  | Definition   |
|-------------------------|--|
| Minor                   | Injuries not included within the two definitions below e.g. minor smoke inhalation, minor physical injury caused during evacuation, e.g. sprain or bruising.   |
| Significant             | RIDDOR major injury or non-permanent disability as a result fire/smoke, or significant physical injury caused during evacuation e.g. broken or fractured limb. |
| Serious Personal Injury | Death/permanent disability as a result of exposure to fire/smoke, or serious physical injury caused during evacuation, e.g. crushing, back/neck injury.        |

29 Generally buildings on sites covered by this OC will have a low occupancy and as such Table 2.1 of the EMM is deemed the most appropriate. Where the occupancy is considered to be high (tens rather than single figures) then Table 2.2 for multiple casualties should be considered.

30 Established standards are the most likely to be used for fire risks within the EMM as they are defined through the EMM as,

"Codes of Practice and other standards linked to legislation, eg CEN standards, providing specific standards of health, safety and welfare. Also published or commonly known standards of performance interpreted by Sectors, TD, SG or other specialists, industry or other organisations as levels of performance needed to meet a general or qualified duty under health and safety law."

31 In this instance the standards and guidance include the DCLG guidance as well as relevant British Standards and building regulations guidance.

### **Determination of Likelihood**

32 The EMM requires establishment of the likelihood of harm. In doing this it is necessary to take into account factors associated with the specific situation; these might include:

- Type of workplace.
- Protection of escape routes,
- Fire compartmentation,
- Fire detection and alarm,
- Fire fighting provision,
- Occupancy levels,
- Adjacent structures,

33 Wherever possible the inspector should seek advice from a specialist fire inspector when determining the risk gap for enforcement purposes.

34 Tables 2 and 3 in Annex 2 provide illustrative examples of likelihood for typical situations encountered by an Inspector during inspections as an aid to determining the risk gap.

35 Compliance and administrative arrangements and the application of duty holder and strategic factors are dealt with in the usual way, as discussed in the EMM.

### **HSE ARRANGEMENTS FOR ENFORCEMENT**

36 Front line inspectors, whether in NSD or FOD, will be responsible for enforcement. In this sense their roles 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 inspectorial activities. It is expected that the fire surveyors will

have a major role in commenting on the risk assessments and fire safety arrangements required by the new legislation.

Section 67(1) of the Fire (Scotland) Act 2005 as amended (“the Act”) allows referral of a dispute between the Health and Safety Executive (as an enforcing authority by virtue of section 61(9)(za) of the Act) and a person who has duties under Chapter 1 of Part 3 of the Act (a “dutyholder”), for determination in a situation where the enforcing authority consider that a dutyholder has failed to comply with their Chapter 1 duties and the enforcing authority and the dutyholder fail to agree on what action should be taken. A referral for a determination under section 67 is submitted to the Chief Inspector of Fire and Rescue Authorities.

Annex 3 contains an extract of section 67(1) of the Act along with a procedural note which is issued to assist enforcing authorities, including the Health and Safety Executive, should anyone submit a referral for a determination.

### **Role of HID fire surveyors**

37 For NSD, technical expertise on fire safety matters will continue to be provided by HID fire surveyors. 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 this 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 training of inspectors, and commenting on plans for new buildings.

38 For nuclear sites a pro-active programme of inspections will be adopted by HID to ensure that relevant premises are inspected at adequate intervals and necessary improvements are identified and implemented. The HID fire surveyors will engage with the Responsible Person directly and will ensure that appointed Divisional Inspectors are informed of any action taken. For NSD the HID fire surveyors will consult the nominated site inspector before issuing any formal notices (except Prohibition Notices issued in response to any matters of serious and imminent concern) and to resolve any conflicts between general fire safety matters and either the security or nuclear safety cases.

39 For shipbuilding and construction the HID fire specialists will continue to provide advice as requested.

### **Standard forms for notices**

40 Standard forms provide convenient and valid formats for the formal notices provided for in the legislation. These should be used whenever possible. It should be noted that the legislation does not require specific forms

to be used, however it is necessary to be consistent with the requirements summarised above, for the notices to be valid.

## CONSIDERATIONS SPECIFIC TO NSD

### **Conflict with security or nuclear safety requirements**

41 It is possible that situations may arise where there is a conflict between general fire safety requirements and the nuclear or security safety cases. It is important that the NSD nominated site inspector ensures that all relevant aspects are considered when potential solutions are considered. If resolution is not readily identified the nominated site inspector should involve his/her line management in determining the acceptable position in regard to HSE and enforcement.

### **Complex sites including decommissioning sites and Naval dockyards**

42 For most licensed nuclear sites the identification of the responsible person and associated management organisation will be straightforward. Complications may arise where the licensed site is only part of a larger complex owned and operated by others or where the licensee is not the owner, e.g. where ownership is passed to NDA. The overriding consideration is that HSE is only responsible for enforcing the RR(FS)O/F(S)A on licensed nuclear sites (and sites that would be licensed if they were not Crown facilities), ships under construction and construction sites. Detailed information is provided within the legislation to assist if there is any doubt regarding these definitions. For all other locations and facilities the responsibility for enforcing the new legislation is with the other enforcement agencies, such as local Fire and Rescue Authorities or MoD Fire Service, as defined in article 25.

43 On complex sites, typically Naval dockyards, HSE/NSD will be responsible for enforcing the new legislation for any licensed site or "any premises which would have, 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 section 1 of the Nuclear Installations Act 1965" according to article 25 of the legislation. Thus HSE/NSD will be the enforcing authority for the areas of the facility used for storing, handling or maintaining materials or equipment covered by the 1965 NIA, whether the site is licensed or not. Areas definitely within the scope of the local FRA or MoD Fire Service would be any purely domestic area, such as barracks and recreational facilities. Non-nuclear areas of the dockyards where there are ships under repair would be subject to enforcement by HSE/FOD. Further advice is provided in OC 217/6, including details of a letter of understanding between HSE and MoD that should be used as the basis for local arrangements.

### **Considerations specific to ships under construction or repair**

44 In the shipbuilding and ship repair industry premises will be subject to two, and in some cases, more, enforcement authorities. HSE will be responsible

for enforcement of the RR(FS)O/F(S)A in relation to activities in or on ships under construction or repair, whereas for other areas of the shipyard it is the local fire authority. This will be more complicated where the site, or part of it, is a licensed nuclear site. OC 217/6 gives guidance on the demarcation however in some cases there may need to be liaison with the local fire authority.

### Considerations specific to construction

Construction sites, may be subject to two, and in some cases, more, enforcing authorities. HSE will be responsible for the enforcement of the RR(FS)O/F(S)A in relation to general fire precautions within the curtilage of the site. Fire & Rescue Authorities (F&RA) would enforce any accommodation (e.g. site offices and sleeping accommodation) not within the site curtilage, i.e. separated by distance, for example a road. Information regarding demarcation on nuclear licensed sites can be found in OC 217/6.

For construction sites, general fire precautions and fire risks that arise from the construction process are currently dealt with under The Construction (Health, Safety and Welfare) Regulations 1996 (CHSW). In April 2007 these Regulations will be amalgamated with the New Construction Design and Management Regulations (CDM) Inspectors will still be able to enforce general and process fire precautions as before and this does not change with the introduction of RR(FS)O/F(S)A.

Currently, the CHSW Regulations, and in future the CDM Regulations require duty holders to ensure suitable and sufficient steps (so far as is reasonably practicable) are taken to prevent the risk of injury to any person during construction work from fire and explosion. This means they have to take measures to reduce the likelihood of fire due to work process. Including storage.

The CHSW Regulations (CDM Regulations from April 2007) also require duty holders to have, in the event of danger:

- a means of raising the alarm,
- means of fire fighting,
- a means of escape that is clear from obstruction, have emergency lighting and protected where necessary
- and have emergency procedures and training.

The RR(FS)O/F(S)A have revoked the Fire Certificates (Special Premises) Regulations (Special Premises included temporary accommodation units and accommodation in existing buildings). This means inspectors now need to ensure general fire precautions are in place, not only for the site itself but also for accommodation previously covered by a Fire Certificate.

Where the HSE do not have enforcement responsibilities then inspectors will need to be able to identify matters of evident concern in relation to general fire precautions that they come across during their normal inspection activities and deal with these by communicating with the relevant enforcing authority (usually F and RA). The document "Guide to Fire Safety in Factories and Warehouses" provides good advice on general fire precautions and can be found on the Department for Communities and Local Government website.

"Further advice is available in 'Joint Code of Practice Fire Prevention on Construction Sites, 6th Edition' recently issued by the Fire Protection Association in collaboration with the Construction Federation."

(This is a recent publication concerning fire protection on construction sites and buildings undergoing renovation. It was put together with the support of The Association of British Insurers, The Chief Fire Officers Association and the London Fire Brigade.)

45 Inspectors will need to be able to identify and deal with matters of evident concern in relation to general fire precautions that they come across during their normal inspection activities. The Department for Communities and Local Government guidance "Guide to Fire Safety in Factories and Warehouses" provides good advice on general fire precautions.

46 The Shipbuilders and Shiprepairers Association (SSA) will be issuing a guidance note on "Fire Precautions on Ships under Construction and Repair". There are also SSA guidance notes on:

- Hot work and naked lights on ships under construction and repair
- Confined spaces on ships under construction and repair
- Guidance on storage and use of oxygen and fuel gases on board ships under construction and repair
- Contractor control.

47 These guidance notes are available to inspectors electronically see SIM 03/2004/50 for further details.

48 Where more specialist advice on general fire precautions is required the fire surveyors in HIDS13E should be contacted.

## DEFINITIONS

49 The RR(FS)O introduces a number of important terms. These are summarised in this section in the context of HSE's enforcement remit.

### **Responsible person**

50 The RR(FS)O places responsibility for compliance on the "responsible person". Article 3 defines the responsible person as:

- the employer (for a workplace to any extent under the employer's control) or
- a person who has control of a premises in connection with him carrying out any trade, business or other undertaking (for profit or not) or
- the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of any trade, business or other undertaking.

### **Competent person**

51 Except where a responsible person has sufficient training or knowledge he must appoint one or more competent persons to assist in undertaking preventative and protective measures under the regulations. The competent person is defined in article 18 (5) as a person who has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the preventative and protective measures. Article 18 (8) states that where there is a competent person in the responsible person's employment, that person must be appointed in preference to a competent person in his employment.

52 These requirements for responsible and competent persons imply that inspectors should be seeking an exposition of the responsible persons management arrangements for compliance, and that those arrangements must address the functions of responsible and competent persons.

---

ANNEX 1  
EQUIVALENCE OF PROVISIONS RR(FS)O AND F(S)A

| Provision                       | RR(FS)O    | F(S)A  |
|---------------------------------|------------|--|
| Requirement for risk assessment | Article 9  | Sections 53 and 54   |
| Approach                        | Article 10 | Section 55   |
| Emergency exits                 | Article 14 | Not explicitly addressed   |
| Maintenance                     | Article 17 | Section 54   |
| Competent persons               | Article 18 | Not defined  |
| Powers of inspectors            | Article 27 | Section 62   |
| Alterations notice              | Article 29 | Section 65   |
| Enforcement notice              | Article 30 | Section 64   |
| Prohibition notice              | Article 31 | Section 63   |
| Enforcing authority             | Article 25 | Section 61 as modified by The Fire (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005. Statutory Instrument 2005 No.2060 (S.7). |
| Limited disapplication of HSWA  | Article 47 | Section 70   |

---

ANNEX 2  
EXAMPLES FOR RISK GAP ASSESSMENT FOR EMM

**Table 2 - Risk Matrix for Single/Low Casualties**

| Descriptor  | Application                                | Likelihood  |  |   |  |
|-------------|--|---|--|---|--|
|             |  | Probable  | Possible   | Remote  | Nil/Negligible                                       |
| Minor       | Injuries or conditions not included below. | Numerous unrelated less serious deficiencies.   | Small number of unrelated less serious deficiencies.<br><br>Accumulated combustibles beneath a single portakabin.  | Isolated minor deficiency e.g. single failure of an item of fire protection equipment (detector head, fire extinguisher). | Duty holder complies with or exceeds legal standards |
| Significant | Non-permanent or reversible health effect. | Significant number of deficiencies in the management of fire risk e.g. some significant shortfalls in the provision of fire protection /prevention systems. | Numerous unrelated less serious deficiencies, but with additional mitigation for the risk.<br><br>Accumulated combustibles beneath multiple portakabins. | Small number of unrelated less serious deficiencies.  |  |
|             |  | Numerous less serious deficiencies but with limited additional mitigation.<br><br>Escape impeded by fixed structures and                                    | Inappropriate storage of flammables e.g. solvents/paint.*<br>DSEAR.  |   |  |

|                         |                                   |   |  |   |  |
|-------------------------|-----------------------------------|---|--|---|--|
|                         |                                   | furniture.  |  |   |  |
| Serious Personal Injury | Permanent health effect or death. | Systematic deficiencies in the Management of Fire Risk e.g. failure to maintain fire protection/prevention systems. | Significant number of deficiencies in the management of fire risk e.g. some significant shortfalls in the provision of fire protection/prevention systems. | Isolated serious deficiency e.g. absence of complete fire detection and alarm system. |  |

**Table 3. Risk Matrix for Multiple Casualties**

| Descriptor  | Application                                | Likelihood   |  |   |  |
|-------------|--|--|--|---|--|
|             |  | Probable   | Possible   | Remote  | Nil/Negligible                                       |
| Minor       | Injuries or conditions not included below. | Numerous less serious deficiencies   | Small number of deficiencies.  | Isolated minor deficiency e.g. single failure of an item of fire protection equipment (detector head, fire extinguisher). | Duty holder complies with or exceeds legal standards |
| Significant | Non-permanent or reversible health effect. | Significant number of deficiencies in the management of fire risk e.g. some significant shortfalls in the provision of fire protection/prevention systems. | Numerous less serious deficiencies, but with additional mitigation for the risk. | Small number of deficiencies.   |  |
|             |  | Numerous less serious  |  |   |  |

|                         |                                   |   |  |   |  |
|-------------------------|-----------------------------------|---|--|---|--|
|                         |                                   | deficiencies but with limited additional mitigation.  |  |   |  |
| Serious Personal Injury | Permanent health effect or death. | Systematic deficiencies in the Management of Fire Risk e.g. failure to maintain fire protection/prevention systems. | Significant number of deficiencies in the management of fire risk e.g. some significant shortfalls in the provision of fire protection/prevention systems. | Isolated serious deficiency e.g. absence of complete fire detection and alarm system. |  |

---

ANNEX 3  
THE SUBMISSION OF APPLICATIONS FOR THE DETERMINATION OF A  
DISPUTE UNDER SECTION 67 OF THE FIRE (SCOTLAND) ACT 2005

**Procedural Note Issued By HM Chief Inspector Of Fire And Rescue  
Authorities**

SCOPE

1. This note details the procedure for the determination of disputes as provided for in section 67 of the Fire (Scotland) Act 2005 as amended (“the Act”) other than for cases where the enforcing authority is the Chief Inspector of Fire and Rescue Authorities (“the Chief Inspector”).
2. Section 67 of the Act allows referral of a dispute between an enforcing authority and a person who has duties under Chapter 1 of Part 3 of the Act (a “dutyholder”), for determination in a situation where the enforcing authority consider that a dutyholder has failed to comply with the Chapter 1 duties and the enforcing authority and the dutyholder fail to agree on what action should be taken.
3. The determination procedure in this note is applicable to disputes in respect of relevant premises where, by virtue of section 61(9) of the Act, the enforcing authority is:
  - a. the health and Safety Executive;
  - b. the fire service maintained by the Secretary of State for Defence;
  - c. the local authority; or
  - d. the fire and rescue authority or joint fire and rescue board.
4. This note contains principally procedural information. Policy guidance in respect of when to use the determination procedure is a matter for each enforcing authority to determine and operate, having regard to any guidance that Scottish Ministers may issue on the subject.
5. This determination procedure should not be used where the enforcing authority consider that the risk to relevant persons is so serious that the issue of a prohibition notice is appropriate.
6. This determination procedure may be appropriate where an enforcing authority is contemplating informal enforcement action or the issue of an enforcement notice.
7. The Chief Inspector will become involved only in formal determination requests made within the scope of section 67 of the Act, requests for informal views will not be actioned.

PRELIMINARY

8. It is assumed that before proceeding with an application for a determination, the enforcing authority and the dutyholder will have tried to reach agreement by discussion of the issues which are

causing the difficulty and by negotiation and by fully exploring alternatives.

## MAKING AN APPLICATION

9. Section 67 of the Act only allows a referral for determination to be made where both the enforcing authority and the dutyholder agree that such an application should be made. Neither party can act without the consent of the other. An application for determination submitted with the approval of one party only is outwith the scope of section 67 of the Act and will not be considered

10. An application for determination is made to the Chief Inspector. Application can be made either by letter (or if appropriate by email) to the following address:

HM Chief Inspector of Fire and Rescue Authorities  
Area 1R  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

Fax: 0131 244 2564

Email: [jeff.ord@scotland.gsi.gov.uk](mailto:jeff.ord@scotland.gsi.gov.uk)

Phone for enquiries: 0131 244 2452

11. An application for determination should include the following information from the **enforcing authority**:

- i. the name and address of the enforcing authority;
- ii. the name and address of the person acting on behalf of the enforcing authority to deal with the application for determination;
- iii. the name and address of the dutyholder(s);
- iv. the address and use of the relevant premises (if appropriate) to which the dispute applies;
- v. a copy of any relevant correspondence between the enforcing authority and the dutyholder;
- vi. any information the enforcing authority wish to supply in support; and
- vii. a statement clearly explaining the area(s) of dispute and specifically identifying what they expect the Chief Inspector to determine.

12. Within a determination application, the enforcing authority must clearly set out its opinion in respect of:

- i. Which provision(s) of the legislation it considers there is non-compliance by the dutyholder.

- ii. The circumstances which indicate that there is non-compliance by the dutyholder with the provision(s) of the legislation
  - iii. The actions or measures that are considered necessary to remedy the non-compliance
  - iv. The reason why the actions or measures are considered necessary
13. An application for determination should include the following information from the **dutyholder**
- i. the name and address of the dutyholder(s);
  - ii. the name and address of any agent acting for the dutyholder(s);
  - iii. the address and use of the relevant premises (if appropriate) to which the dispute applies;
  - iv. a copy of any supporting documentation or information that the dutyholder wishes to supply in support; and
  - v. a statement clearly explaining the area(s) of dispute and specifically identifying what the dutyholder expects the Chief Inspector to determine.

## FREEDOM OF INFORMATION

14. Applicants should be aware that any information submitted by either party as part of a determination application may be subsequently released upon request to a third party, under the terms of the Freedom of Information (Scotland) Act 2002. Additionally, determination decisions are likely to be made publicly available.

## ON RECEIPT OF THE APPLICATION

15. On receipt of the application by the Chief Inspector the application will be acknowledged.
16. The Chief Inspector may request further information from either or both parties to assist with the determination of the case.
17. A determination decision will be made on the basis of the information supplied, a visit will not normally be made to premises, it is therefore important that all relevant information is supplied. The aim will be to issue a determination decision as soon as possible and within 2 months from receipt of all the requested information but it is acknowledged that in complex cases this timescale may require to be extended.
18. Once a determination decision has been made, the enforcing authority and the dutyholder will be notified by letter or email. There may be occasions when the Chief Inspector is unable to make a determination decision or thinks that it is inappropriate to do so. In such cases, applicants will be notified and a reason will be given.