

FIRE SAFETY POLICY DIRECTIVE

**ENFORCEMENT POLICY
STATEMENT**

1. Introduction

- 1.1 The principal aim of the West Midlands Fire and Rescue Authority (“the Authority”) is to make the West Midlands a safer place by reducing as far as possible the risks and social and economic costs of fires and other dangers, without imposing an unnecessary burden on those members of our community that have fire related legislative responsibilities. Securing compliance with legal regulatory requirements is an important part of achieving this aim.
- 1.2 The West Midlands Fire Service (“the Service”) enforces general fire safety legislation on behalf of the Authority in the West Midlands. Legislation enforced by the Authority includes (amongst others):
 - The Regulatory Reform (Fire Safety) Order 2005
 - The Fire Precautions (Sub-Surface Railway Stations) Regulations 1989 (this reference will be updated to ‘The Fire Precautions (Sub-surface Railway Stations) England Regulations 2009’ when those regulations come into force on 1st October 2009)
 - The Petroleum (Consolidation) Act 1928
 - The Manufacture and Storage of Explosives Regulations 2005
 - Health and Safety at Work etc. Act 1974
 - The Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR)
 - The Construction (Design and Management) Regulations 2007
- 1.3 This Enforcement Policy Statement is based on the principles of Better Regulation, contained in the Enforcement Concordat and Regulators Compliance Code, and sets out the approach the Authority will take when enforcing the legislation. It will be used in conjunction with guidance issued by Parliament; Communities and Local Government; the Department for Business Enterprise and Regulatory Reform; other relevant government departments and agencies; and the Local Better Regulation Office.
- 1.4 Compliance with fire safety legislation will be achieved through: informal enforcement action (by providing education, advice and guidance) and formal enforcement action (the serving of official notices). Securing compliance with statutory requirements through proportionate use of enforcement powers, including prosecution, is an important part of this enforcement policy.
- 1.5 The Authority will ensure that all relevant officers are adequately skilled and are trained in the use of this policy.
- 1.6 The Authority will seek to work with other enforcing authorities to ensure collaborative regulation and sharing of information.

2. **Advice and Guidance**

- 2.1 The Authority believes that prevention is better than cure. The Authority will aim to secure compliance with relevant legislation, while avoiding bureaucracy or imposition of excessive cost. We will seek to work with the regulated entity to support and encourage economic progress wherever possible, by offering information and advice to those we regulate. Individuals, businesses and other undertakings will be encouraged to put safety first and to integrate fire prevention and fire protection requirements into normal working methods.
- 2.2 In accordance with its duties under section 6 of the Fire and Rescue Services Act 2004 the Authority will, to the extent that it considers it reasonable to do so, make arrangements for:
- (a) the provision of information, publicity and encouragement (in respect of the steps to be taken to prevent fires and death or injury by fire);
 - (b) the provision of advice, on request, about:
 - (i) how to prevent fires and restrict their spread in premises.
 - (ii) the means of escape from premises in case of fire.
- 2.3 In exercising its duty to provide advice and information, the Authority **will not**:
- undertake fire risk assessments for regulated entities;
 - appear in court on behalf of regulated entities in any prosecution brought by a third party including another enforcing authority, under Health and Safety or fire safety legislation, except as an expert or neutral witness to give general mitigating evidence;
 - draft fire safety policy and procedures on behalf of regulated entities. It is incumbent upon regulated persons to comply with fire safety legislation, however, guidance may be given to regulated entities for whom the Authority is a Lead Fire Authority Partner;
 - other than in those circumstances, which appear to the Authority to be in the public interest and appropriate to the functions of a best value authority, act as a consultant on fire safety related issues other than as required to meet statutory consultation requirements imposed on other regulated bodies and persons.
- 2.4 The Authority's officers will seek to provide advice that is appropriate to the premises, their use and the risk there present. They will do so by reference to nationally

recognised guidance and standards that regulated entities may have assisted in developing.

- 2.5 Where use of national guidance is not appropriate in the circumstances of the case, local guidance will be used.
- 2.6 Comments from regulated entities on style, format and content of guidance used will be welcomed to assist in the review and to assist in the further development of any guidance that the Authority may produce from time to time.
- 2.7 Where a regulated entity seeks advice or guidance from the Authority or its officers about actions needed to correct fire safety deficiencies or otherwise secure compliance with the law this will not automatically lead to formal enforcement action by the Authority. Should enforcement action prove to be necessary in the circumstances of the case it will be based on the principles, expectations and methodology of the Enforcement Management Model (EMM) produced by the Health and Safety Executive (HSE), which is considered national best practice.
- 2.8 The Authority would prefer to advise and guide regulated entities than to serve formal notices or commence prosecution proceedings but it must reserve the right to act in the public interest, according to the circumstances of the case.

3. The Purpose and Method of Enforcement

- 3.1 The purpose of the Authority's enforcement function is to ensure that preventive and protective measures are taken by the regulated entity to reduce the risk and spread of fire and to protect relevant persons from any remaining risk of fire, respectively. The need for enforcement stems from Article 26 of the Regulatory Reform (Fire Safety) Order 2005. The term enforcement has a wide meaning and applies to all dealings between the Authority and those on whom the law places a duty.
- 3.2 The purpose of enforcement is to:
 - (a) promote and assist the regulated entity to achieve sustained compliance with the law.
 - (b) ensure that the person responsible for premises to which fire safety regulation applies takes action to deal with serious risks to the safety of relevant persons in a timely manner that is proportionate to the risk.
 - (c) ensure those individuals, businesses and other undertakings that breach fire safety requirements are held to account, which may include bringing alleged offenders before the courts.

- 3.3 Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims might be pursued, nor is it taken to assist such claims.
- 3.4 The Authority has a wide range of interventions at its disposal to secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer the regulated entity information and advice, in person, in writing (by letter or e-mail), or verbally over the telephone. This may include a warning that, in the opinion of the officer, they are failing to comply with the law.
- 3.5 Where appropriate, officers may: agree an action plan; provide a notification of deficiencies report; serve an enforcement / improvement notice; prohibit / restrict the use of premises; and / or they may prosecute.
- 3.6 Formal notices and prosecutions are important and appropriate means by which to bring a regulated entity to account for failures under the law. Where it is appropriate to do so, the Authority will use one or more of these measures in accordance with this policy, to help secure compliance with fire safety law.
- 3.7 Analysing the preventive and protective measures encountered during audits, following incidents or investigating complaints is essential before taking any enforcement action. In deciding the resources to devote to these investigations, the Authority will have regard to the principles of enforcement set out in this policy statement and the objectives published in the current Integrated Risk Management Plan.
- 3.8 The Authority will use discretion when deciding to inspect/audit premises and when determining the enforcement action that may subsequently be appropriate. The Authority will set down in writing the decision-making process which officers will follow when deciding on enforcement action and make this publicly available. Officers will utilise this process when determining enforcement action. Any professional judgement used will be applied in accordance with the principles of Better Regulation which are in accordance with the Enforcement Concordat and the Regulators Compliance Code.

4. **Better Regulation Principles**

- 4.1 The Authority believes in firm but fair enforcement of fire safety law. This should be strongly influenced by the principles of: proportionality (in applying the law and securing compliance); consistency (of approach); targeting (of enforcement action); transparency (about how the regulator operates and what those regulated may expect); and accountability (for the regulator's actions). These principles are expanded upon in the following paragraphs.
- 4.2 **Proportionality**
Proportionality means relating the enforcement action taken to the risk to public safety. Those whom the law protects and those on whom it places duties (duty holders)

expect that action taken by the Authority, to achieve compliance or to bring regulated entities to account for non-compliance, should be proportionate to the risk to public safety, or to the severity of non-compliance, which includes any actual or potential harm arising from the failure under the law. In determining appropriate action, the Authority will have regard to the principles of 'as low as is reasonably practicable' (ALARP) and 'so far as is reasonably practicable' (SFAIRP).

4.3 Consistency

Consistency means taking a similar approach to an issue in similar circumstances to achieve similar ends. Persons with responsibilities under fire safety law, who manage similar risks, can expect a consistent approach from the Authority in terms of: the advice tendered; the use of enforcement powers; decisions on whether to prosecute; and in response to incidents and complaints. The Authority has arrangements in place to promote consistency in the exercise of professional judgement by the officers, including arrangements for liaison with other enforcing authorities. The Authority will seek to continually improve through internal review, audit and consideration of comments received.

4.4 Targeting

Targeting means regulatory effort will be directed towards higher levels of risk to the safety of the community, i.e. where the hazards and risks are less well controlled. The Authority aims to make sure, through targeting, that the direction of regulatory effort takes into account the level of risk. Action will be primarily focused on those directly responsible for the risk and who are therefore best placed to control it. The Authority has systems for prioritising regulatory effort. These include a risk-based re-inspection programme and localised plans to identify high risk premises. Risk assessment (utilising methodology and data provided by Communities and Local Government) together with local data, intelligence and knowledge, underpins the Authority's approach to regulatory activity. The Authority will seek to identify relevant and good quality data to continually improve its risk based inspection programme.

4.5 Transparency

Transparency means helping the regulated entity to understand the standards expected from them and the standards that should be expected from the Authority. It also means making clear to the regulated entity the difference between statutory requirement and advice or guidance about what is desirable but not compulsory. This statement sets out the general policy framework within which the Authority should operate. Regulated entities also need to know what to expect when an officer calls and what rights of complaint are open to them.

The following can be expected when an officer is enforcing the law:

- Officers providing individuals, businesses or other undertakings with information or advice (either face to face or in writing, including any warning); they will explain what needs to be done to comply with the law and explain why.

- Officers will, if asked, write to confirm any advice and will distinguish legal requirements from best practice advice.
- Unless urgent action is necessary, an opportunity to discuss what is required to comply with the law will be offered before formal enforcement action is taken.
- A written explanation will be given of any rights of appeal against formal enforcement action at the time the action is taken.
- Where examples of good practice are identified, officers will aim to provide positive feedback to encourage and reinforce these good practices and may share them with others as examples of good practice.

4.6 Regulators are accountable to the public for their actions. This means that the Authority must have policies and standards against which they can be judged (such as those outlined in this Policy Statement and the Authority's Equalities policy). The Authority will also have an effective and easily accessible mechanism for dealing with comments and handling complaints. The Authority's "Customer care standards" incorporating Compliments Comments and Complaints is explained fully on the World Wide Web at the following address:

http://www.wmfs.net/digitalAssets/103/103330_CCC160409.pdf. Alternatively, contact with the Service and the Public Relations Team can be achieved by using one of the following methods:

By telephone: **0121 380 6102/6103/6104** (during office hours) or using the Customer Care Hotline: **0121 380 7404** (24 hour answer phone).

Via our website: www.wmfs.net

By e-mail: contact@wmfs.net

By letter: **West Midlands Fire Service Headquarters, 99 Vauxhall Road, Birmingham B7 4HW.**

Having a published and publicised procedure helps demonstrate to the public that the Authority and the Service take comments and complaints seriously. These comments and complaints can help highlight potential problems and help the Authority and the Service to build on the things that it does well.

5. **Audit and Inspection of Premises**

5.1 The Authority operates a risk-based system of audit and inspection of premises. This system utilises data and guidance from Communities and Local Government together with local intelligence and knowledge. The system incorporates local risk priorities identified from trends in location, types of fire, and assessment of vulnerable groups in local areas within the West Midlands. From time to time (and particularly if any significant changes are proposed) the Authority will consult regulated entities on its methodology through consultation on its Integrated Risk Management Plan or by other means.

- 5.2 Audits and inspections will be undertaken on the basis of the Authority's risk-based system, under which priority will be given to individual premises, generic premises types or uses that have been assessed as being of relatively higher risk. The greatest audit and inspection effort will be allocated to premises where a failure to comply will pose a serious risk to the safety of relevant persons and where the Authority has a duty to enforce compliance with the law.
- 5.3 The Authority's overall enforcement programme will take account of the need to sample a small number of premises in (relatively) low risk categories in order to continually test the methodology used. The Authority will respond to allegations of fire risk in any premises for which they are the enforcing authority (complaints) regardless of the relative risk level associated with the premises.
- 5.4 The Authority has entered into a number of agreements with other enforcing authorities to provide clarification about which authority takes 'the lead' for particular premises types where enforcement regimes overlap. To minimise audit and inspection burdens for regulated entities the Authority will continue to develop, engage in, and foster partnerships with other enforcing agencies and stakeholder groups, particularly through Local Strategic Partnerships which will encourage joint working relationships.
- 5.5 The Authority will continue to work with other enforcing authorities, regulated entities and others in order to avoid duplication of information collected from regulated entities. The Authority will also aim to:
- determine requests for information according to perceived risk;
 - reduce the frequency of data collection;
 - obtain data from alternative sources;
 - allow electronic submission;
 - request only information which is justified by risk assessment; and
 - share data with other relevant authorities.
- 5.6 When collecting information that may be required from regulated entities the Authority will consider the costs and benefits of such requests in order to avoid, so far as is reasonably practicable, requesting information that is not required to demonstrate compliance with the law or required to identify the person that is responsible under the law.

6. **The Use of Formal Action**

Before formal enforcement action is taken, officers will provide an opportunity to those responsible for complying with the law to make representations and, where possible, to resolve points of difference, save where the situation is so serious that immediate action is necessary. Where immediate action is taken to prohibit or restrict the use of premises, this will be explained in writing to the relevant party / parties (normally within 24 hours). Where rights of appeal exist against formal action the Authority will clearly state this, together with advice on the appeal process.

7. **Decisions on Enforcement Action**

- 7.1 The Authority seeks to ensure that legislation is enforced in an impartial manner through policy management, procedures, guidance and safeguards.
- 7.2 Some decisions about enforcement action are taken by officers who inspect / audit premises and where appropriate, in consultation with more senior colleagues. Particularly serious action, such as prohibition or restriction of the use of premises or part thereof, can only be authorised by identified officers. The decision to prosecute is taken by the Chief Fire Officer following consultation with the Fire Authority.
- 7.3 Officers will be fair, independent and objective when considering enforcement action and will not let personal views cloud their judgement.
- 7.4 The Authority will ensure that the correct individual and / or company is prosecuted for correct and relevant offence/s.
- 7.5 The Authority is a Public Authority for the purposes of the Human Rights Act 1998; it will apply the principles of the European Convention on Human Rights in accordance with the Act, as it does in all of its enforcement activity.

8. **Enforcement Options**

- 8.1 The Authority's policy on determining the level of enforcement action to take utilises nationally recognised risk assessment based methodology. In deciding what action to take to ensure compliance with the law, the Authority considers the following:
 - the nature and seriousness of any failures to comply;
 - the risk to relevant persons of death or serious injury;
 - previous related enforcement history or record of compliance of the regulated entity;

- action taken by the regulated entity to prevent any recurrence;
- the likely effectiveness of the various enforcement options;
- any explanation offered by, and the circumstances and attitude of, the regulated entity; and
- any statutory defence available.

8.2 The Authority will always seek to use enforcement action that is proportionate, primarily to the circumstances of the offence and the risk to life, but in so doing will also consider other factors such as the size of the business or undertaking and the nature of its activities.

8.3 Methods of enforcement available to the Authority are:

- provide the regulated entity with education and information;
- agree to an action plan (written / prepared by the regulated entity);
- issue an informal notice of deficiencies;
- issue a statutory notice, which might include identifying failures to comply with the law and the nature of the corrective action needed;
- prohibit / restrict the use of the premises;
- referral of the matters to other agencies; and
- prosecution through the criminal justice system.

8.4 The Authority will keep its regulatory activities under review through management of its fire safety enforcement function. This will ensure, so far as reasonably practicable, that all actions are proportionate and impose the minimum enforcement necessary to secure appropriate compliance with the law.

These enforcement approaches are expanded upon in the paragraphs that follow.

8.5 Educate and Inform

When a breach of the law is found, a verbal or written warning may be given. Officers may also give advice on how to comply with the law. Where advice is not mandatory this will be made clear.

8.6 Action Plan

Where a fire risk assessment or fire safety audit identifies a need for improvements to premises the responsible person will often benefit from advice prior to implementing

the necessary works. By law, the regulated entity is responsible for compliance with the law, although inspectors may provide advice which might assist the regulated entity to plan and prioritise remedial action (thereby ensuring best value and maximum benefit is achieved). The regulated entity may achieve this by formulating an action plan. The aim of an action plan is to focus attention on identified risks. The proposed preventive and protective measures, necessary to reduce risk to an acceptable level and protect people from any residual risk, should be identified and the timescale over which remedial action is to be achieved should be agreed with the Authority. Where an action plan has been compiled by the regulated entity and agreed by the Authority; the regulated entity should be made aware that failure to meet the objectives of the plan in full may result in formal enforcement action being such as the issuing of a statutory notice. Any formal action taken relating to outstanding matters will be taken at the end of the agreed period of time for completion.

8.7 Informal Notices

Informal notices will identify to the regulated entity any failures to comply with the law and will include a means by which compliance might be achieved. The recipients of these notices are at liberty to find other suitable means to achieve compliance. Depending on the circumstances of the case, these notices may or may not include a date by which remedial work should be complete and a follow-up inspection / audit may be conducted to check that remedial work has been carried out to a suitable standard.

8.8 Statutory Notices

Statutory notices requiring corrective action would generally be used where there is a clear failure to comply with the law; where the degree of risk or harm from the situation is significant; and where a remedy needs to be identified and secured within a set period of time. Notices specify the problem and will either require a remedy as determined by officers or (if the legislation allows) may allow for other action with an equivalent remedial effect. In most cases there is a right of appeal against a notice. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing to the person on whom the notice is served.

Where a notice requires changes to premises in which another enforcing body has a statutory interest, the Authority will, so far as is reasonably practicable, consult with such bodies as can reasonably be identified before serving the notice. Any such consultation will not release the regulated entity from their statutory obligation to consult relevant bodies in respect of works they will undertake as a result of a notice. Any failure by the Authority to consult with any particular body or person will not invalidate any notice served under the Regulatory Reform (Fire Safety) Order 2005.

The term 'Statutory notice' incorporates Alterations Notices which may be served in cases where there is a serious risk to relevant persons or where there may be a serious risk to relevant persons if a change is made to the premises. The change must be either present or reasonably foreseeable for this notice to be issued. The notice operates to compel the regulated entity to inform the Authority before making a change

to the premises and acts to inform the regulated entity of the nature of the information that should be sent to the Authority before changes are made.

8.9 Prohibition / Restriction Notices

The Authority has powers under Article 31 of the Regulatory Reform (Fire Safety) Order 2005 and Sections 21 and 22 of the Health and Safety at Work etc. Act 1974 to prohibit the use of the whole or part of premises or to restrict the use of premises. For the Authority to serve a notice that prohibits / restricts the use of premises, the risk present there involves or will involve a risk to the safety of people from fire so serious that the premises should be so prohibited / restricted. Where such immediate action is necessary an explanation will be given at the time and confirmed in writing. Where there are rights of appeal these will be clearly set out in writing at the time the action is taken.

8.10 Referral to other Agencies

Where other enforcing authorities (including Health and Safety authorities) have a regulatory interest in particular premises, details will be forwarded to the appropriate agency. Where, for example, apparently dangerous conditions or practices (unrelated to fire) are noted in a workplace.

8.11 Prosecution

The Authority will use discretion in deciding whether to bring a prosecution. The decision to prosecute is a serious step for the Authority. Fair and effective prosecution forms a legitimate element of the Authority's strategy to reduce risk in premises for which the regulated entity has responsibility for fire safety law. Any prosecution has serious implications for all involved, including: those prosecuted; those whose safety has been put at risk; witnesses; and Authority personnel. The Authority will apply the guidance set out below so that it can take fair and consistent decisions about prosecutions.

Criminal proceedings will be taken against those persons responsible for the alleged offence. Where a workplace is involved, it will be usual practice to prosecute the employer (as the responsible person). Other responsible persons include those with control of the premises and owners of premises. The Authority will also consider any part played in the offence by a body corporate. Parallel action may also be taken against any other duty-holder applicable to the legislation, where it can be shown that the offence was attributable to neglect, failures or actions on their part.

The decision to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may progress unless the Authority finds sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

When in the course of an investigation the Authority has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with the Code for Crown Prosecutors that it is in the public interest then that prosecution will progress. Where the circumstances warrant, and the evidence to support a case is available, the Authority may prosecute without warning or recourse to alternative sanctions.

9. **Enforcement Management Model Guidance**

- 9.1 The Authority will follow the guidance contained in its Enforcement Management Model (EMM) guidance. The guidance deals with areas that might impact its decision to prosecute, including: responsible person factors; strategic factors; the aggravating and mitigating facts of the case; and any statutory defence available to the defendant.
- 9.2 The factors listed in 9.1 above are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors for and against prosecution. Each applicable factor must be considered and given appropriate weight according to the circumstances of the case. The Authority will determine the importance of each factor in the circumstances of each case to make an overall assessment.
- 9.3 Where there is sufficient evidence, the Authority will normally consider prosecution in any of the following circumstances:
- failures to comply with legislation where that failure put people at risk of death or serious injury;
 - persistent failures to comply with statutory requirements in relation to the same premises;
 - failure to comply with formal remedial requirements, such as the requirements specified in statutory notices (it is unacceptable to ignore any remedial measures required to be taken);
 - reckless disregard for fire safety requirements (it is in the interests of all members of the community, that irresponsible operators are made to comply);
 - failure to supply information without reasonable excuse or to knowingly or recklessly supply false or misleading information (it is essential that lawful requests for information by the Authority or its Officers are complied with and that accurate information is supplied to enable informed regulation to be exercised); and

- obstruction of officers when exercising their powers (the Authority regard obstruction of, or assaults on, its Officers while conducting their lawful duties as a serious matter)

10. **Human Rights and other Statutory Compliance**

All enforcement policy development and enforcement action will be carried out in a manner which complies with the Human Rights Act 1998 and the requirements of other relevant legislation. Officers will also comply with all relevant codes of practice, unless a code is not mandatory and there are good reasons which justify non-compliance, for which the Officer may be called to account.

11. **Publicity**

The Authority will consider publicising any conviction, which could serve to draw attention to the need to comply with fire safety requirements, or which could deter anyone tempted to disregard their duties under fire safety law. Details of statutory notices served will be held on publicly available registers in accordance with the Environment and Safety Information Act 1988.

12. **Actions by the Courts**

12.1 In cases of sufficient gravity, for example (but not exclusively) where serious injury or ill-health has resulted, consideration will be given to requesting the Magistrates to refer the case to the Crown Court for higher sentencing. The same factors as listed in paragraph 9.1 are used, but consideration is also given to the sentencing powers of the Magistrates Court.

12.2 Penalties

The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Authority will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers.

The Authority will always seek to recover the costs of investigation and court proceedings.

13. **Further Information**

Further information about the Authority's enforcement of fire safety regulation can be obtained from the following sources:

- the Service's Customer care standards;
- IRMP;
- Regulators' Compliance Code;
- Enforcement Concordat; and
- Code for Crown Prosecutors.