West Midlands Fire and Rescue Authority

Fire Safety Policy Statement

ENFORCEMENT POLICY STATEMENT
(England and Wales)

Introduction

We are approachable and want to engage with and hear from you.

The following pages explain our enforcement policy. This document is supported by other documents required by the Regulators Code, namely our Service Standards and our Challenges, Appeals and Complaints procedure. This guidance has been produced in consultation with the Better Regulation Delivery Office. This policy aims to explain our approach to our regulatory functions in relation to fire safety and public safety in our communities. It also explains the behaviours that business can expect to receive from us and the legal constraints and frameworks under which we operate.

Quick-guide

1. Introduction

The West Midlands Fire and Rescue Authority (the Service) (and its officers) will exercise its regulatory functions in accordance with the principles of better regulation and will comply with all relevant laws. Business should have a mainly positive experience of being regulated by the Service. To learn more, click here.

2. Principles

The Service is tasked with seeing that people are safe in case of fire and believes that deaths and injuries caused by fire in regulated premises are preventable, if the right measures are taken. The Service and its officers will engage and work with business, in preference to enforcing fire safety standards. To learn more, click here.

3. Regulation

The purpose of enforcement action is to bring about improvements in safety and in attitudes to providing safety. While the Service has laid down procedures for its officers, we will take each case on its merits. To learn more, click here.

4. Helping Those We Regulate (Transparency)

The Service aspires to help regulated businesses and to work with them to resolve fire safety problems but will robustly enforce where the risk to people is highest and when those responsible refuse to help them. To learn more, click here.

5. Targeting

The regulatory policy of the Service focuses on risk in case of fire and in places where we will be most effective in saving / protecting life. To learn more, click here.

6. Accountability To Those We Regulate

The Service is accountable for its actions and is open to analysis and questioning of our regulatory work. To learn more, click here.

7. Principles Of Enforcement Action

A range of relevant factors will be considered before any enforcement action is taken by the Service. When action must be taken to improve safety, the Service will be clear about what is required. To learn more, click here.

8. Our Enforcement Action

The Service would rather work with business to make places safe than enforce against them. When enforcement is needed; we will be clear about what must be done. Letters

or notices may be sent to confirm what business needs to do to. All enforcement will be proportional to the risk. To learn more, click here.

9. After Enforcement Action

The Service encourages dialogue and open communication during and after the enforcement process. Requirements for safety and how to challenge what we are asking for will be made clear. To learn more, click here.

10. Failure To Comply With Requirements

When the Service makes an enforcement decision, there might be a route to appeal or challenge what we have said. How to do this (and how to complain about our behaviour) will be made clear. Business can feel confident to talk to us. To learn more, click here.

11. Simple Cautions And Prosecution

If an offence has been committed, it means the law has been broken and the Service can take the matter to court. In addition to going to court, there are other actions that the Service can take. To learn more, click here.

12. Public Register

The Service must enter details of certain notices (called “relevant notices”) into a register to which the public have access (in accordance with the Environment and Safety Information Act 1988). Further details are available on request or from the CFOA public register web pages

13. Other Duties Of The Service

As well as ensuring that people are kept safe in case fire, the Service is also responsible for some other laws relating to public safety. To learn more, click here.

14. Data Protection

The Service will comply with data protection laws. To learn more, click here.

15. Freedom Of Information

The Service is subject to the Freedom of Information Act, which provides a right of access to regulatory information held by the Service. To learn more, click here.

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More on the Introduction

1.1 This statement sets out the service that business and others being regulated can expect from the regulatory and enforcement function of the West Midlands Fire and Rescue Authority (the Service) and its appointed inspectors. It goes some way to satisfying the Regulators' Code by committing the Service (and appointed inspectors) to adhere to the principles of good enforcement with the assistance of effective procedures and clear guidance, which can be made available to businesses and members of the public.

1.2 This Enforcement Policy Statement has been prepared with regard to the following legislation and statutory guidance:

The Regulators' Code - [more]

The Regulatory Enforcement and Sanctions Act 2008 - [more]

The Legislative and Regulatory Reform Act 2006 - [more]

The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 - [more]

The Environment and Safety Information Act 1988 - [more]

The Regulatory Reform (Fire Safety) Order 2005 - [more]

The Licensing Act 2003 - [more]

The Explosives Regulations 2014 - [more]

The Petroleum (Consolidation) Regulations 2014 - [more]

1.3 The primary function of the regulatory part of the Service is to achieve safety in case of fire (in premise to which fire safety law applies).

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More on Our Principles

2.1 Fire safety regulation is founded on the principle that people should be kept safe in case of fire. We regulate to help secure this safety; and through our regulation, we aim to provide a consistently high-quality service to those we regulate. Our regulatory activity generally extends to premises in which there is a trade, business or other undertaking.

2.2 Non-compliance with fire safety law will mean that, in our view, people are at risk in case of fire. Where we identify people at risk in case of fire, we will respond in

proportion to that risk, taking account of the likelihood and severity of fire, in line with our service standards.

2.3 The Service believes in firm but fair enforcement of fire safety standards. We aim to achieve this by:

- proportionately applying the law (to secure safety);
- being consistent in our approach to regulation;
- targeting our resources and enforcement action on the highest risk;
- being transparent about how we operate and regulate; and
- being accountable for our actions.

2.4 We will have regard to the Regulators' Code when developing the policies and procedures that guide our regulatory activities. We will encourage and promote fire safety while minimising the associated costs to business of providing safety from fire.

2.5 We believe that by fostering good relationships with our business community and by working with them, we can improve public safety, business resilience, and can remove any unnecessary burdens of complying with fire safety law.

2.6 The Service will endeavour to engage with the business community, to seek their views about our policies and practices. (Details of engaging with us are available on request and on our website).

2.7 In the most serious cases of danger in case of fire, we will take immediate and decisive action to secure safety, for example by serving a prohibition notice that can stop people from using the premises.

For more information, click here. Our Charter to business can be seen by clicking here. Our priorities and objectives are set out in The Plan.

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More on the way we approach regulation

3.1 In accordance with the Regulators' Code, the Service takes enforcement action (and imposes sanctions and penalties) with an aim to:

(a) change the behaviour of the offender;

(b) change societal attitudes to the risks from fire;

(c) eliminate financial gain or benefit from putting people at risk;

(d) exercise a proportional response to the nature of the offence and the harm caused / potential for harm;

(e) restore safety to premises where fire safety risks were found;

(f) encourage fire safety to be secured in future; and

(g) impose an appropriate sanction for the particular offender, which can include punishment through the courts (and the public stigma that should be associated with a criminal conviction).

Click here for more information on the Regulators' Code

3.2 Avoiding fires is better than protecting people when fire occurs. Where fire is likely and / or the consequences of fire pose a hazard to people, it becomes necessary for us to take action (against the responsible person / duty holder) to reduce the risk. We have a wide range of enforcement action available to us. The actions we may take include:

(a) no action;

(b) providing advice;

(c) taking non-statutory action;

(d) taking Statutory action (including the serving of enforcement, alterations and prohibition notices);

(e) taking samples of dangerous materials or extracts of recorded information; and

(f) securing information to prepare for prosecutions.

3.4 The enforcement actions listed above are not written in an absolute order of escalation. Enforcement action taken by the Service is scalable and appropriate to the risk to people in case of fire.

3.5 When statutory enforcement action is necessary, each case will be considered on its merits. All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

3.6 All enforcement activities, including investigations and statutory actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act 2000, and in accordance with any formal procedures and codes of practice made under this legislation so far as they relate to the regulatory activity of the Service.

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More on Helping those we regulate

4.1 We will help those responsible for delivering safety in case of fire to understand what is expected of them and what they should expect from the Service. Legal requirements will be clearly distinguished from best practice or non-statutory fire safety advice. We will publish guidance in a clear, accessible, concise, format using media appropriate to the target audience, in plain language.

4.2 (Details are available on request and on our website)

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More on Targeting

5.1 Our policy on inspections will be to focus primarily on those whose premises and activities give rise to the most serious risk to life in case of fire. In making an assessment of risk, we will take into account the fire safety record of those we regulate and the current risks to people in case of fire.

5.2 We will maintain a strategy that will identify and evaluate risks in premises as well as to the wider community and allocate resources to carry out inspections accordingly. We want to see fire safety provided in buildings and may take action against those regarded as putting people at risk in case of fire.

5.3 Earned recognition may be awarded to businesses for assurance of safety, including for example external verification of safety systems / practices. The

concept of earned recognition is currently undergoing further consideration within the Fire and Rescue Service in conjunction with business representatives.

5.4 Our Service Standards and plans including details of our risk-based approach to targeting inspections and are available on request. Call 0121 380 7500 and ask to speak with the Head of Fire Safety

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More on our Accountability

6.1 The Service is accountable to its community for its actions. This means we must have policies and standards against which we can be judged, and an effective and easily accessible mechanism for dealing with challenges, appeals and complaints.

6.2 (Details of our challenges, appeals and complaints procedure can be accessed here)

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More on the Principles of Enforcement Action

7.1 In assessing necessary and proportionate enforcement action, consideration will be given to (amongst other things):

- the safety history at the premises,
- the history of operational attendances and false alarms at the premises,
- safety referrals to the premises from other authorities / interested parties,
- any Primary Authority relationship that might be in place with the business,
- the adequacy of fire safety arrangements at the premises,
- the attitude of the responsible person / duty holder to providing safety,
- statutory guidance,
- codes of practice, and
- legal advice.

7.2 Certain enforcement action, such as the decision to use a Simple Caution and / or the decision to investigate for prosecution, is further and specifically informed by those matters set out below at section 11

7.3 In every case, when we require action to remedy unsafe conditions, we will explain the nature of the unsafe conditions to those responsible and will confirm the same in writing.

7.4 Because, subject to any letter or notice we give, work must be done to improve or secure the safety of people in case of fire; we will agree reasonable timescales within which the work must be completed that are agreed with those responsible.

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More on Our Enforcement Action

8.1 The Service will offer duty holders information and advice both verbally and / or in writing. This will include an explanation of why any specified work is necessary and a time period within which the specified work should be completed. Educating, informing and advising responsible persons and duty holders about their duties under fire safety legislation will form a fundamental element of our enforcement regime. The Service will fulfil its obligation under section 6(2) of the Fire and Rescue Services Act 2004, to give on request, advice on fire safety free of charge.

8.2 Where we find risks to safety, we may deal with them by non-statutory means or (where appropriate) we may take statutory action by serving alterations, enforcement and / or prohibition notices. We may also issue Simple Cautions, and (in the most serious cases) may prosecute. Before statutory enforcement action is taken, inspectors will provide the person responsible with an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference without recourse to enforcement action under statute (unless immediate action is required to reduce the risk to life or to prevent evidence from being destroyed).

8.3 In certain circumstances, after evaluating the safety at premises, no action may be required. This will be the case when the safety of people in case of fire has been adequately secured.

8.4 If the likelihood of fire is high and the consequences in case of fire are low, advice may be given on how the likelihood can be reduced. Advice may also be given

where the consequences of fire might cause harm to people but can be simply avoided. Advice can also be given to point out good practice or to signpost business continuity advice or other business protections, for example protection from flooding.

8.5 Where the likelihood of fire is low / medium or the consequences of a fire are slight, non-statutory action will be taken. This action will take the form of a letter, pointing out that people are at risk in case of fire, where in the building they are located and what has led to them being put at risk as well as what should be done to provide safety and how to prevent the same danger from recurring. Non-statutory action may also be taken, if those responsible have displayed clear intentions to undertake corrective action. Failure to respond to non-statutory action can result in escalation to statutory enforcement action.

8.6 Statutory action will take the form of serving a Notice (alterations, enforcement, and / or prohibition notice). Statutory action will be taken when the consequences of fire are such that people are likely to be harmed, suffer serious injury, or death. It can require specific action to be taken or certain activities to cease.

8.6.1 Where a reasonable known change to premises or to the use of premises could result in a significant increase in the risks to people on the premises, we may serve an Alterations Notice, which requires the responsible person / duty holder to notify us, before making the identified change.

8.6.2 Enforcement Notices require improvements in safety and will point out: that people are at risk in case of fire; where in the building they are located; and what has led to them being put at risk, as well as what should be done to provide safety and how to prevent the same danger from recurring. Enforcement Notices include a reasonable period of time for safety to be put in place. Failure to respond to a statutory Notice can result in escalation to an investigation for prosecution.

8.6.3 Where immediate action is considered necessary to keep people safe from fire, a Prohibition Notice, which can prohibit or restrict the use of premises, can be served. An explanation of why such action is required will be given at the time and confirmed in writing. Whereas a Prohibition Notice requires action to remove imminent and immediate risks in case of fire, an Enforcement Notice might also be served to deal with less imminent risks in case of fire.

8.7 Fire Safety law gives power to authorised inspectors to take samples of dangerous materials or extracts of recorded safety information and documents. When we take materials or documents we will provide an appropriate receipt.

8.8 In the most serious of cases we will gather information and conduct an investigation to prepare for a prosecution. The decision to prosecute a case will be taken by those with authority to do so in accordance with our Scheme of Delegations.

8.9 All our members of staff that make enforcement decisions will be required to follow the Regulators' Code.

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More about After Enforcement Action

9.1 When the Service takes enforcement action we will discuss what is required to achieve safety for relevant persons with the responsible person / duty holder (taking into account the circumstances of the case, if they have been explained to us).

9.2 The Service will clearly explain any advice, required actions or decisions taken at the time of our visit and will be willing to discuss such matters on any future occasion to ensure those responsible have clarity of what must be done.

9.3 Our letters and notices will provide details in writing of what must be done and how to appeal against any of our regulatory decisions. Our letters and notices will also explain what will happen next, especially if you do not undertake the work. Our web-site has details of how to complain about our conduct, if you should feel it necessary. Details of our challenges, appeals and complaints procedure can be accessed here.

9.4 We encourage those responsible for providing safety in case of fire to contact us, especially if there are any questions or comments about our regulatory activity. We will also maintain regular communication (where required) until safety has been provided.

More on a Failure To Comply With Requirements

10.1 Rights of and routes to appeal will be clearly set out in writing and issued with our letters.

10.2 Failure to comply with an alterations, enforcement or prohibition notice constitutes an offence and may result in prosecution.

10.3 We can withdraw alterations, enforcement and prohibition notices at any time but they will generally be deemed to be in force until such time as the notice is complied with, withdrawn or cancelled by the court.

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More on Simple Cautions And Prosecution

11.1 There are a number of offences that can be committed under Fire Safety law. Among the foremost of these are failure to comply with a statutory notice and failing to provide safety in case of fire to such extent that one or more people are put at risk of death or serious injury in case of fire.

11.2 The Service can deal with offenders through prosecution and Simple Cautions. These legal actions are important ways to bring to account those responsible for committing legal offences. Where appropriate, we will use one of these measures in addition to serving a statutory notice.

11.3 A prosecution may be taken following full consideration of the many factors connected with alleged breaches of the law. Penalties for offences are awarded by the courts and can include fines, imprisonment or both.

11.4 A Simple Caution will only be used where a prosecution could be properly brought and there is a realistic prospect of conviction. A Simple Caution includes a written submission from the person responsible that they committed an offence.

11.5 A record of a Simple Caution will be kept on file for three years and if a conviction for a further offence is brought within that period, the written submission will be introduced to the court for consideration.

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More about the Other Duties Of The Service

13.1 In addition to Fire Safety law the Service is also responsible for (or has duties in relation to) the following regulations.

- Explosives Regulations 2014. [More]
- Petroleum (Consolidation) Regulations 2014. [More]
- The Licensing Act 2003. [More]
- The Building Regulations 2010. [More]

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More on Data Protection

14.1 The Service will comply with the principles of the Data Protection Act 2018 (which governs the use of personal data received or obtained) and will respect the rights and freedoms of individuals when processing their details. You can read our approach to Data Protection here

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More on Freedom Of Information

15.1 Under the Freedom of Information Act 2000, individuals are given 'a general right of access to information held by public authorities in the course of carrying out their functions, subject to certain conditions and exemptions'. Under Section 19 of that Act, public authorities are required to produce a publication scheme setting out details of the information routinely published or made available, how the information is made available (in hard copy and on-line), and whether it is available free of charge or on payment. For more information about Freedom of Information, click here.

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The Regulators' Code

The Regulators' Code is a statutory code of practice for regulators and makes six broad requirements:

i. To carry out activities in a way that supports those they regulate to comply and grow;

ii. To provide simple and straightforward ways to engage with those they regulate and to hear their views;

iii. To base regulatory activity on risk;

iv. To share information about compliance and risk;

v. To ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and

vi. To ensure a transparent approach to regulatory activity.

The service has taken regard of the Regulators' Code in producing this policy statement. Click 'The Regulators Code' for the full version.

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The Regulatory Enforcement and Sanctions Act 2008

The Regulatory Enforcement and Sanctions Act established the Local Better Regulation Office (later renamed as the Better Regulation Delivery Office and re-named again as Regulatory Delivery). It also imposed a duty on Regulators to: (a) have regard to any guidance issued by BRDO, (b) a duty to comply with guidance where the Regulator is directed to do so by BRDO, and (c) a duty to have regard to any list of enforcement priorities published by BRDO. As a listed Regulator, the Service is committed to these duties.

For the full version click this link: 'The Regulatory Enforcement and Sanctions Act '

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Legislative and Regulatory Reform Act 2006

Part 2 of the Legislative and Regulatory Reform Act, requires the Service to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is: (i) proportionate; (ii) accountable; (iii) consistent; (iv) transparent; and (v) targeted to situations which need action. When we exercise a regulatory function, (which for the Service includes: the Regulatory Reform (Fire Safety) Order 2005, the Petroleum (Consolidation) Regulations 2014, Explosives Regulations 2014, and the Health and Safety at Work (etc) Act 1974) we have regard to the Regulators' Code.

For the full version click here: 'Legislative and Regulatory Reform Act'

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The Legislative and Regulatory Reform (Regulatory Functions) Order 2007

The Legislative and Regulatory Reform (Regulatory Functions) Order imposes a duty on the Service to have regard to the Regulators' Code when determining general policies or principles. It requires that the regulatory activities of the Service are carried out in a way which is transparent, accountable, proportionate and consistent, as well as being targeted only at cases in which action is needed.

For the full version click here: 'Legislative and Regulatory Reform (Regulatory Functions) Order'

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The Environment and Safety Information Act 1988

The Environment and Safety Information Act requires the Service to make a publicly accessible record of formal enforcement action that we have taken.

For the full version of the Act, click this link: 'The Environment and Safety Information Act 1988'

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The Regulatory Reform (Fire Safety) Order 2005

The Regulatory Reform (Fire Safety) Order 2005 principally imposes a general duty on responsible persons and duty holders to take general fire precautions to keep people safe in case of fire and establishes enforcing authorities to enforce the provisions of the Order. The Service is an enforcing authority under the Order and is empowered to inspect premises and serve notices to improve safety standards (among others).

For the full version click here: 'The Regulatory Reform (Fire Safety) Order'

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The Licensing Act 2003

The Licensing Act establishes the Service as a 'responsible authority' with whom the Licensing Authority must consult in connection with licensable activities, including the sale or supply of alcohol or the provision of regulated entertainment or late night

refreshment. The licensing objectives are to promote: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The Service can request a review of a premises license (under Section 51 of the Licensing Act 2003). The options available to the Licensing Committee are:

i. Modification of the conditions of the Licence;
ii. Exclusion of Licensable activity from the scope of the Licence;
iii. Removal of the Designated Premises Supervisor;
iv. Suspension of the Licence for a period not exceeding three months;
v. Revocation of the Licence;
vi. Issue of a Warning Letter;
vii. No Action.

For the full version of the Act click this link: 'The Licensing Act'

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The Explosives Regulations 2014

The Service is the local authority for the purposes of dealing with applications for registration or for a licence to store explosives (under certain prescribed conditions). These regulations are enforced using powers from the Health and Safety at Work (etc) Act 1974.

For the full version of the regulations, click this link: 'The Explosives Regulations'

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The Petroleum (Consolidation) Regulations 2014

The Service is the 'petroleum enforcement authority' and can grant 'storage certificates' for premises at which petrol is dispensed, and enforces The Regulations in premises to which they apply. These regulations are enforced using powers from the Health and Safety at Work (etc) Act 1974.

For the full version of the regulation click this link: 'The Petroleum Consolidation Regulations'

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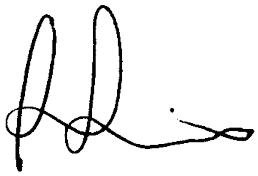
The Building Regulations 2010

Under the Building Regulations, Building Control Bodies must consult with the Service with respect to 'Building Work', in particular new buildings and buildings undergoing 'material alterations' in existing buildings. The Service must respond to Building Control Bodies within a stipulated time period.

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Approval

Prepared and Approved By: **Rob Davis**

Signature: 

Date: **January 2019**

Reviewed By:

Signature:

Date: