



Regulatory Reform (Fire Safety) Order 2005

Guidance Note No. 2: Determination of Disputes by the Secretary of State



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October 2007

Product Code: 07 FRP 04638/b

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Introduction

1. The Regulatory Reform (Fire Safety) Order 2005 (“the Order”) came into force on 1 October 2006. This affects all non-domestic premises in England and Wales. The Order sets out the duties of the person responsible for premises (known in the Order as the “responsible person”). Other persons in control of premises are under duties parallel to those of a responsible person. References in this guidance to a responsible person also includes such a person. The responsible person is required to carry out a suitable and sufficient fire risk assessment and then implement the necessary fire precautions and management procedures.
2. The Order is enforced by periodic inspections or audits by the enforcing authority (usually Fire and Rescue Authorities). If the enforcing authority considers that the responsible person has failed to comply with any provision of the Order they can advise on remedial measures or issue an enforcement notice specifying what measures they consider necessary.
3. Where both parties (the enforcing authority and the responsible person) agree that there is a need for improvements to fire precautions but disagree on the technical solution to be used, they may agree to refer the issue to the Secretary of State for independent determination under article 36 of the Order.

Example Following an inspection the enforcing authority has written to a responsible person suggesting that six monthly maintenance inspections of the fire alarm system are inadequate and that a competent contractor should inspect the system every three months.

The responsible person disputes this and agrees with the enforcing authority to seek determination from the Secretary of State.

4. An enforcing authority may refuse to agree to this procedure – for instance where they consider that any delay brought about by the process would put people’s safety at an unacceptable risk.

Example An enforcement notice has been served on the responsible person for a theatre. The notice requires that the exit signs indicating an escape route should be replaced by larger ones due to the viewing distances involved.

The responsible person disputes this, but the enforcing authority refuses to use the determination procedure as they consider that the small signs pose a serious and immediate danger as the occupants of the building will be unable to recognise the escape route. *(The RP still has the right to appeal to a court.)*

5. Determinations can only be made in respect of technical disagreements. The Secretary of State cannot determine the law itself.

Example Following an inspection the enforcing authority has written to the owner of a premises warning that enforcement action will be taken unless a written record of a risk assessment is produced for inspection.

The owner of the premises does not consider that the Order requires him to produce such a document and agrees with the enforcing authority to seek determination from the Secretary of State. However the Secretary of State rejects the request as it relates to a determination of the law.

6. Once the Secretary of State has made a determination, the enforcing authority may not take enforcement action that would be in conflict with his determination. Once the decision has been issued the Secretary of State has no further jurisdiction in the case and any matters that follow should be referred back to the enforcing authority.

Example The Secretary of State has issued a determination in relation to the evacuation procedures in place in a warehouse used for the storage of tinned pet food. The procedures are considered acceptable as the fire risk in the premises is low.

Following an inspection the enforcing authority finds that the premises is now being used for the storage of electronic goods stored in cardboard packaging and that the evacuation procedures have not been revisited.

If the enforcing authority considers that the procedures are now inadequate they are no longer prevented from serving an enforcement notice requiring the procedures to be changed.

How to apply for a determination of a dispute

7. An application for determination should contain *three* paper copies of the following documents:
 - names and addresses of the enforcing authority and the responsible person;
 - full postal address of the premises in question;
 - statement from *both* parties requesting the Secretary of State to determine the question;
 - statement setting out the provision of the Order at issue and the measures proposed by both parties to meet the provision;
 - any relevant correspondence involved;
 - any enforcement notice; and,
 - any other documentation, supporting the case for compliance, including any calculations, plans etc.
8. The package of documents should be sent to

Fire Prevention Policy Team
Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
9. If your request for a determination is considered valid you will receive a letter confirming receipt. If your request is not considered valid you will receive a letter setting out why it has been rejected.

Further Information

10. You may be asked for more documents or information. This must be provided within the specified timescale or the Secretary of State may refuse to consider the case further.

The Decision

11. You should receive a decision within four months of all documents being submitted. A copy will be sent to both parties.
12. Once the decision has been issued, the Secretary of State has no further jurisdiction in the case. The Department will not enter into any correspondence with respect to a case or offer any further explanation of a decision. Any matters that follow should be referred back to the enforcing authority.