



# NORTH YORKSHIRE FIRE & RESCUE SERVICE

## **Fire Safety Staff Guidance Note – Regulatory Reform (Fire Safety) Order 2005 Enforcement Notice Procedure for failure to comply with provisions of the Order.**

### **1.0. Introduction.**

1.1. This guidance has been prepared with the objective of establishing a common standard for regulation within the North Yorkshire Fire and Rescue Authority (the Authority).

1.2. This guidance is provided to assist Fire Safety inspectors; sets out what business and others being regulated can expect from North Yorkshire Fire and Rescue Authority and its officers. It commits North Yorkshire Fire Authority to sound regulatory policies and procedures. It may be supplemented by additional statements of policy and guidance.

### **2.0. The Order.**

2.1. Article 30 of Regulatory Reform (Fire Safety) Order 2005 (the Order) outlines procedures, in case of failure to comply, for the serving of Enforcement Notices.

2.2. Article 30 (1) allows the Authority to serve the notice on the responsible person or other relevant persons (Article 3 and 5 (3)).

2.3. Article 30 (2) details that the Enforcement Notice must contain details of the failure to comply, and require the responsible person to remedy the failure. The time scale cannot be less than 28 days.

2.4. Article 30 (3) The Authority may include with the Enforcement Notice, directions as to measures considered necessary to remedy the failure(s). Any such measures may be framed so as to afford the responsible person a choice of differing ways of remedying the contravention.

2.5. Fire Safety inspectors will carry out either, a scheduled fire safety audit, a post fire audit, or a fire safety audit following a complaint or consultation, the results of the audit will indicate if an Enforcement Notice is appropriate in the circumstances.

### **3.0. The Enforcement Notice.**

3.1. The Order empowers the Fire and Rescue Authority to serve an Enforcement Notice, which may be served with immediate effect, and subsequently withdrawn or extended at any time.

3.2. It is the responsibility of the persons on whom the Notice is served to comply with any requirements. There is a right of appeal within 21 days of the serving of the notice to a Magistrates Court. The bringing of the appeal has the effect of suspending the notice, until the appeal is disposed of, withdrawn.

3.3. If on appeal the Court determines that the authority has served an Enforcement Notice without appropriate professional judgement, the authority may be open to a claim for compensation.

3.4. It is an offence under Article 32 of the Order to fail to comply with any requirement imposed by an Enforcement Notice.

#### **4.0. Approval.**

4.1. A Fire Safety Inspector who, following a fire safety audit, where the audit outcome indicates Enforcement Notice, due to failures to comply with the provisions of the order should take the following actions.

4.2. The Fire Safety Inspector should in the first instance assess the risk and determine in the circumstances of the case that it is not appropriate to address the failures to comply by the use of an action plan or notification of fire safety deficiencies.

4.3. If an action plan or notification of fire safety deficiencies is not appropriate or cannot be agreed with the responsible person the Fire Safety Inspector will consider the serving of an Enforcement Notice and advise the responsible person of this action, pending Group Manager approval.

4.4. The Fire Safety Inspector should record as a pocket book entry, and as a note for case within the premises record, when the opportunity for the responsible person to formulate an appropriate action plan has been given.

4.5. The serving of an Enforcement Notice will only take place following consultation and approval being granted by a Group Manager. The Group Manager will assess the case against the listed gravity factors within the attached appendix.

4.7. If the Fire Safety Inspector and the Group Manager are of the same opinion the Enforcement Notice will be served, by an inspector not below the role of fire safety Watch Manager. The Enforcement Notice will bear the Group Manager's name.

4.8. If the Fire Safety Inspector and the Group Manager are not of the same opinion and cannot reach a considered conclusion, an Area Manager will advise on the course of action to be taken.

#### **5.0. Procedures.**

5.1. The Fire Safety Inspector will utilise the appropriate standard forms held within the Community Fire Safety Risk Management Information System (CFRMIS) to complete the serving of the Enforcement Notice and accompanying schedule of steps to be taken.

5.2. The Enforcement Notice shall, for the most part, be served on the responsible person, however where such action cannot be taken, it will be necessary to look to other persons who have, to any extent control of the workplace. In the case of corporate employers, it is the body corporate that is the responsible person (the employer), and a local manager takes the status of an employee through whom the employer exerts overall control. Therefore the notice will generally be served on the Company Secretary at the company's registered office, with a copy sent to the manager of the premises concerned.

5.3. The Authority will consult with any other authority(s) that have an interest in the premises concerned, including a Primary Authority if the premises is in a Primary Authority Scheme, prior to serving of an Enforcement Notice. Typically when alterations are required to the premises which may be affected by any statute for which another authority has primacy. This will be done using the appropriate standard letter, (RRO.ENF.10, Consultation with other relevant authority).

5.4. When the result of the fire safety audit indicates 'fast track enforcement', this should be dealt with as a matter of urgency. Where it is necessary to consult with other authorities before serving the notice, this can be undertaken by telephone or e-mail.

5.5. The Fire Safety Inspector may consider setting relatively short time scales for the responsible person to comply with the notice; taking into account the circumstances of the case. However a minimum notice period of 28 days must be given for the responsible person to take the action required to comply with the notice.

5.6. Each Enforcement Notice will have a unique reference number recorded on the notice. Numbers will be generated automatically by CFRMIS.

5.7. Notification of service of the Enforcement Notice should be forwarded to CAO Performance for inclusion in the public register. Details of the Enforcement Notice will not be posted on the register until 21 days have elapsed or if an appeal is pending.

## **6.0. Records.**

6.1. Once completed the Enforcement Notice should be served as soon as possible on the responsible person or any other person mentioned in Article 5 (3) of the Order. The recipient should acknowledge receipt of the notice by signing the receipt attached to the notice; a signed copy of which should be kept on the CFRMIS premises file.

6.2. Where the responsible person declines to sign the acknowledgement of service receipt, the Fire Safety Inspector should complete a statement, limited to those details relating to the serving of the notice, which should be kept as part of the CFRMIS premises file.

6.3. All paper records relating to the case should be scanned and maintained in the CFRMIS premises file. A case file is also required for the purpose of storing any original forms.

6.4. CAO Performance will be responsible for:-

- Completing the public register for the purposes of The Environment and Safety Information Act 1988.

6.5. The appropriate forms and letters for use in the issue of Enforcement Notices are held within CFRMIS and should be accessed through the premises active job. The standard enforcement letters are:

ENF010 Enforcement Notice letter to Owner  
ENF01R Enforcement Notice letter to Responsible Person  
ENF01S Enforcement Notice letter to Company Secretary or Other

Subsequent communications are made by launching a standard letter head and adding standard paragraphs listed below:

ENF.07 Enforcement Notice extension granted  
ENF.08 Enforcement Notice extension not granted  
ENF.09 compliance with Enforcement Notice  
ENF.10 consultation with other relevant authority  
ENF.11 withdrawal of Enforcement Notice

## **7.0. Monitoring of premises subject to an Enforcement Notice**

7.1. Whilst an Enforcement Notice is in force it will be necessary to monitor the situation in the premises concerned.

7.2. Monitoring may involve specific re-visits to the premises or compliance audits, the frequency and timing of which will be determined by the Station Manager Fire Safety and depend upon the nature of the premises and circumstances of the case. The Fire Safety Inspector should furnish himself with the ability to collect evidence.

7.3. The Authority may grant an extension, or further extension, of time specified for the steps to be taken if an appeal against the notice is not pending.

7.4. Where there has been a failure to comply with the Enforcement Notice or progress is unsatisfactory, and then the Enforcement Notice recipient should be cautioned as to the alleged non compliance and invited to attend for an interview under caution. Where necessary it should be confirmed in writing, that the matter is being referred for the consideration of legal action.

7.5. A statement of witness form should be completed by the Fire Safety Inspector (s) dealing with the Enforcement Notice. The statements should outline their total actions and concerns for the whole event.

7.6. See the guidance note on prosecution for details of the procedures to be followed in order to consider prosecution and the guidance note detailing procedures for interviewing persons under caution.

## **8.0. Compliance with an Enforcement Notice.**

8.1. When the Fire Safety Inspector is satisfied that the steps have been taken to remedy the matters which gave rise to the notice, the responsible person will be notified. The compliance with Enforcement Notice paragraph ENF09 will be used for this purpose.

8.2. The use of the compliance with Enforcement Notice form is to meet the requirements of The Environment and Safety Information Act 1988.

- An entry in the register will be made stating that a notice has been complied with.
- The register shall be amended within seven days that the fire and rescue authority is satisfied the notice has been complied with.
- An entry in the register shall be kept for a period of not less than three years.

8.3. Notification of the compliance with Enforcement Notice form should be sent to CAO Performance who will update the Enforcement Notice register.

## **9.0. Withdrawal of an Enforcement Notice.**

9.1. The Authority may withdraw an Enforcement Notice; for example, if a notice has been served on a person who has demonstrated that they are not the responsible person for the purposes of the Order. The notice will be withdrawn using the appropriate standard letter and standard paragraph ENF09, at any time before the end of the period specified in the notice.

9.2. The use of the withdrawal of Enforcement Notice form is to meet the requirements of The Environment and Safety Information Act 1988.

- An entry in the register will be deleted when a notice has been withdrawn.
- The register shall be amended within seven days of the withdrawal of the notice.

9.3. Notification of the withdrawal of Enforcement Notice form should be sent to CAO Performance staff who will remove the relevant entry from the register.



## Appendix

	<b>Gravity factors for consideration</b>	<b>Comment</b>
1	Has a fire occurred, how serious was the fire, has extensive damage occurred?	
2	Are the premises a sleeping risk?	
3	Have people been rescued?	
4	Are vulnerable people involved?	
5	Have people escaped by unusual means?	
6	Have people been injured? (required hospital treatment or fatal)	
7	Has anybody been disadvantaged? (Displaced at short notice lost possessions etc.) Have the view(s) of the victim (s) been obtained?	
8	Has a prohibition notice been breached?	
9	Has a prohibition notice been issued following intervention?	
10	Is an Enforcement Notice in force?	
11	Has an Enforcement Notice been breached?	
12	Has an Enforcement Notice been issued following intervention?	
13	Has a notification of deficiencies been issued?	
14	Has a notification of deficiencies been disregarded?	
15	Where the major breaches against articles are?(see audit record)	
16	Article 8-Duty to take general fire precautions; Article 9 – Fire Safety Risk Assessment Article 10 – Principles of Prevention Applied Article 11 - Fire Safety Arrangements Article 12-Elimination or reduction of risks from dangerous substances; Article 13- Fire detection and warning; Article 14 Emergency routes and exits; Article 15 – Procedures for serious and imminent danger and for danger areas Article 16 – Additional emergency measures in respect of dangerous substances Article 17 – Maintenance Article 18 – Safety assistance Article 19 – Provision of information to employees Article 20 – Provision of information to employers and the self-employed from outside undertakings Article 21 – Training Article 22 – Co-operation and co-ordination Article 23 – General duties of employees at work Article 29 – Alterations notices Article (37) – Fire-fighters' switches for luminous tube signs etc Article (38) – Maintenance of measures provided for protection of fire-fighters	
17	What is the level of the person's responsibility?	
18	Was person in a position of authority? Should that person have known better, was the person irresponsible?	
19	Does that person have previous convictions? Is there a risk of re offending?	
20	Has the responsible person been un-cooperative following intervention?	
21	Has the responsible person sought financial gain?	