

DERBYSHIRE FIRE & RESCUE SERVICE



Derbyshire
Fire & Rescue Service
Making Derbyshire Safer

POLICY NOTE

FIRE PROTECTION ENFORCEMENT

September 2020

VERSION 2.2

INTRODUCTION

This policy sets out the Derbyshire Fire and Rescue Service's (the Service) approach to enforcing the Regulatory Reform (Fire Safety) Order and the relevant sections of the Derbyshire Act on behalf of the Derbyshire Fire and Rescue Authority (the Authority).

The policy, and the working practices to support it, are developed and maintained with information and feedback obtained from national guidance, local consultations, peer review, and internal quality assurance systems.

The Service is committed to good enforcement practice and follows the principles of good regulation.

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Service to have regard to the Principles of Good Regulation and code of practice when exercising the Authority's regulatory functions.

We will exercise our regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities;
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

REGULATORS CODE	<p>The service has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.</p> <p>Our regulatory activities and ways of working will conform to the flexible, principles based framework for regulatory delivery as set out in the Regulators Code.</p> <p>Our policies and procedural guidance are designed and maintained in a manner that best suits the needs of businesses and other regulated entities.</p> <p>In particular:</p> <p>We carry out our activities in a way that supports those we regulate to comply and grow.</p> <p>We maintain simple and straightforward ways to engage with those we regulate and hear views.</p> <p>We base our regulatory activities on risk.</p> <p>We share information about compliance and risk.</p> <p>We ensure clear information, guidance and advice is available to help those we regulate meet their responsibility to comply.</p> <p>We ensure our approach to our regulatory activities is transparent.</p>
HUMAN RIGHTS ACT 1998	<p>The Authority is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is made to the right to a fair trial and the right to respect for private and family life, home and correspondence.</p>
DATA PROTECTION ACT 1998	<p>Where there is a need for the Authority to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.</p>
THE CODE FOR CROWN PROSECUTORS	<p>When deciding whether to prosecute the Authority has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.</p> <p>The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two</p>

	<p>tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':</p> <p>a. Evidential Test - is there enough evidence against the defendant?</p> <p>When deciding whether there is enough evidence to prosecute, the Authority will consider what evidence is reliable and can be used in court. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.</p> <p>b. Public Interest Test - is it in the public interest for the case to be brought to court?</p> <p>The Authority will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the section Enforcement Actions available to the Authority.</p>
<p>REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008</p>	<p>The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority Scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary fire authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.</p>
<p>CONDUCT OF INVESTIGATIONS</p>	<p>All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Authority:</p> <ul style="list-style-type: none"> • Police and Criminal Evidence Act 1984 • Criminal Procedure and Investigations Act 1996 • Regulation of Investigatory Powers Act 2000 • Criminal Justice and Police Act 2001 • Human Rights Act 1998 <p>These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.</p> <p>Our authorised inspectors will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.</p>

APPOINTMENT & AUTHORISATION OF FIRE INSPECTORS	<p>The Authority have delegated the power to appoint and authorise inspectors for the purpose of enforcing the Regulatory Reform (Fire Safety) Order 2005 to the Chief Fire Officer/Chief Executive.</p>
	<p>Fire protection enforcement activities will only be undertaken by an authorised inspector.</p>
ENFORCEMENT ACTIONS (available to the Authority in respect of Criminal breaches) COMPLIANCE ADVICE, GUIDANCE AND SUPPORT	<p>The Authority will provide compliance advice, guidance and support as a first response in many cases of breaches of legislation that are identified dependent on their severity. This advice may be provided in the form of a warning letter to assist individuals and businesses to rectify breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called a 'Notification of Deficiencies') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.</p>
	<p>The Authority recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Service will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.</p> <p>Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Authority recognises that there is likely to be an on-going need for compliance advice and support, to prevent further breaches.</p>
INFORMAL CAUTION	<p>Where contraventions of fire safety legislation are identified and the Service, having carefully considered the circumstances of the case determine that no further action will be taken an informal caution letter may be sent to the Responsible Person.</p>
	<p>The caution will inform the Responsible Person of the fact and that the details will be recorded and taken into consideration in the event of any similar occurrence in the future.</p>
AGREED ACTION PLANS	<p>The Authority may accept voluntary undertakings ('Agreed Action Plans') to rectify compliance failures and/or to prevent recurrence. The Authority will take any failure to honour 'Agreed Action Plans' very seriously and enforcement action is likely to result.</p>
STATUTORY (LEGAL) NOTICES	<p>In respect of breaches, the Authority has powers to issue statutory notices. These include: Enforcement Notices, Prohibition Notices and Alterations Notices. Such notices are</p>

	<p>legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution.</p> <p>An Enforcement Notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring.</p> <p>A Prohibition Notice may also prohibit or restrict the use of premises where the Authority is of the opinion that the use involves, or will involve a serious risk.</p> <p>An Alterations Notice will require persons in control of premises to notify the Authority before making certain changes. The details will be explained in the notice.</p> <p>Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.</p> <p>Some notices issued in respect of premises may be affixed to the premises.</p>
<p>PUBLIC REGISTER OF NOTICES</p>	<p>In accordance with the requirements of the Environment and Safety Information Act details of notices served will be made available on a public register accessed via the web.</p>
<p>SIMPLE CAUTION</p>	<p>The Authority has the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Authority will consider prosecution.</p> <p>A simple caution is likely to influence how the Authority and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.</p> <p>Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.</p>
<p>PROSECUTION</p>	<p>The Authority may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as agreed action plans or statutory notices have failed to secure compliance. When deciding whether to prosecute the Authority has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.</p> <p>Prosecution will only be considered where the Authority is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).</p>

Before deciding that prosecution is appropriate, the Authority will consider all relevant circumstances carefully and will have regard to the public interest criteria described in the Code for Crown Prosecutors.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

RELEVANT DOCUMENTS	Regulatory Reform (Fire Safety) Order 2005 Legislative and Regulatory Reform Act 2006 Regulators Code 2014 Human Rights Act 1998 Data Protection Act 1998 Code for Crown Prosecutors Regulatory Enforcement and Sanctions Act 2008 Police and Criminal Evidence Act 1984 Criminal Procedure and Investigations Act Regulation of Investigatory Powers Act 2000 Criminal Justice and Police Act 2001 Human Rights Act 1998 Environment and Safety Information Act 1998 Building Act 1984 Enterprise Act 2016 GDPR Regulations 2018 Guidance and associated codes of practice for the above
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DOCUMENT HISTORY

Version no.	2.2
Replaces	Fire Protection Enforcement v 2.1 issued April 2018 which has been removed from the Intranet. All hard copies should be destroyed
Summary of Changes	Introduces <ul style="list-style-type: none"> • Appointment and authorisation of Fire Inspectors • Minor grammatical alterations
Author	John Haynes
Department	Protection Policy
Approved by	AM R Reynolds

Revision history

Version	Date	Author	Changes
1.0	January 2010	GM J Haynes	New Policy Note
1.1	February 2012	Bob Hughes	<ul style="list-style-type: none"> • Amended title 'The Better Regulation Office The Better Regulation Delivery Office' • Replaced 'Officers of the Service' with 'Fire Inspectors of the Service'
2.0		Bob Hughes	<ul style="list-style-type: none"> • Major changes following introduction of new legislation

2.1	April 2018	John Haynes	<ul style="list-style-type: none"> • Informal caution • Enterprise Act 2016 • GDRP Regulations 2018 	
<p>Review Period This Policy Note will be reviewed August 2021.</p> <p>Distribution Policy Notes are published on the intranet in the month of issue. No hard copies are distributed.</p> <p>Index Keywords: enforcement, policy, protection, fire, regulator, prosecution, PACE, investigations, compliance, support, action, plans, notice, register, breach, regulatory</p>				