

DERBYSHIRE FIRE & RESCUE SERVICE



Derbyshire
Fire & Rescue Service
Making Derbyshire Safer

POLICY NOTE

FIRE PROTECTION ENFORCMENT

APRIL 2019
VERSION 1.1
STATUS: LIVE

INTRODUCTION

The Derbyshire Fire and Rescue Authority (the Authority) has a duty to enforce the Regulatory Reform (Fire Safety) Order 2005 (FSO), appoint and authorise inspectors to do so and make provision for promoting fire safety in accordance with section 6 of the Fire and Rescue Services Act 2004.

The Authority also has duties under various other acts of parliament and associated regulations relating to fire safety matters that involve authorised inspectors.

This legislation includes, but is not limited to:

- The Derbyshire Act 1981
- The Building Regulations 2010
- The Building Act 1984
- Building (Approved Inspectors etc) Regulations 2010
- Licencing Act 2003.

The Authority discharges these duties through Derbyshire Fire and Rescue Service (the Service).

This policy sets out the Service approach to delivering these duties on behalf of the Authority.

This policy, the working practices and service procedures 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 better regulation.

THE REGULATORS CODE

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Service to have regard to the Regulators Code when exercising the Authority's regulatory functions. The Service has regard to the Regulators Code in the development of this policy.

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.

Our policies and procedural guidance are designed and maintained in a manner that best suits the needs of businesses and other regulated entities.

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
- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

In particular:

- We carry out our activities in a way that supports those we regulate to comply and grow
- We maintain simple and straightforward ways to engage with those we regulate and hear views
- We base our regulatory activities on risk
- We share information about compliance and risk.

We ensure clear information, guidance and advice is available to help those we regulate meet their responsibility to comply.

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.

APPOINTMENT AND AUTHORISATION OF FIRE SAFETY INSPECTORS	<p>The Authority have delegated the power to appoint and authorise inspectors for the purpose of enforcing the order to the Chief Fire Officer/Chief Executive.</p> <p>Fire protection advice, audit and enforcement activities must not be undertaken by any person other than an authorised inspector.</p>
PROCEDURES AND STANDARDS FOR APPOINTMENT AND AUTHORISATION	<p>The procedures to be followed and the standards to be met are set out in the Derbyshire Fire and Rescue Service (DFRS) 'Fire Safety Inspectors Protection Pathway' Service Procedure. This procedure embraces the current Competency Assessment model. The model is aligned to the CFOA 'Competency Framework for Business Fire Safety Regulators' to ensure consistency of approach by Fire and Rescue Services (FRSs).</p>
RESPONSIBILITIES AND AUTHORISATION-SIGNATORY LEVELS	<p>New or advancing Fire Safety Inspectors will normally be signed off in accordance with the procedures set out in the current version of the DFRS 'Fire Safety Inspectors Protection Pathway' Service Procedure.</p> <p>The responsibilities for each level are set out in the same document.</p>
	<p>The record of warranted inspectors and signatory levels is as recorded on the HR system. Warranted inspectors may only sign documents relating to fire protection matters that are within their authority.</p> <p>Documents should be signed by the identified signatory, or in their absence by a person authorised to do so. In all cases, the authorised person should sign using their own name.</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 AND THE GENERAL DATA PROTECTION REGULATIONS (GDPR)	<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 1988 and the General Data Protection Regulations.</p> <p>The Authority will retain, store and dispose of data in line with the service policy and procedure.</p>
THE CODE OF CROWN PROSECUTORS	<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.</p>

	<p>The Code sets out two 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 subscribed 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 in two documents; Prosecution and Caution Procedure and the Prosecution Process, both of which are in the Fire Protection toolkit.</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>THE PROTECTION OF FREEDOMS ACT 2012</p>	<p>The Protection of Freedoms Act 2012 governs the way powers of entry are used and the way inspections are performed. Section 48 of the Act requires the Secretary of State to issue an associated Code of Practice. Section 51 of the Act requires those to which the Code applies to have regard to the Code. The Authority will have regard to the Code when exercising any functions to which the Code relates.</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 • Human Rights Act 1998 • Regulation of Investigatory Powers Act 2000 • Criminal Justice and Police Act 2001 • Protection of Freedoms Act 2012. <p>Further details are provided in the Fire Protection Enforcement policy.</p>

PUBLIC REGISTER OF NOTICES	In accordance with the requirements of the Environment and Safety Information Act 1988 details of notices served will be made available on a public register accessed via the web.
RELEVANT DOCUMENTS	<p>Regulatory Reform (Fire Safety) Order 2005</p> <p>Legislative and Regulatory Reform Act 2006</p> <p>Regulators Code 2014</p> <p>Human Rights Act 1998</p> <p>Data Protection Act 1998 & General Data Protection Regulations</p> <p>Code for Crown Prosecutors</p> <p>Regulatory Enforcement and Sanctions Act 2008</p> <p>Protection of Freedoms Act 2012</p> <p>Police and Criminal Evidence Act 1984</p> <p>Criminal Procedure and Investigations Act</p> <p>Regulation of Investigatory Powers Act 2000</p> <p>Criminal Justice and Police Act 2001</p> <p>Human Rights Act 1998</p> <p>Environment and Safety Information Act 1998</p> <p>Building Act 1984</p> <p>Enterprise Act 2016</p> <p>Competency Framework for Business Fire Safety Regulators</p> <p>Guidance and associated codes of practice for the above.</p>

DOCUMENT HISTORY	
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Summary of changes	Removal of duplicated text that is in other policies, procedures and guidance.
Author	SM Adam Hind
Responsible Portfolio/Department	Protection
Approved by	AM R Taylor

Revision History

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1.0		GM Platts	New Policy Note

Review Period

This Policy Note will be reviewed on in May 2020.

Distribution

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