

EXISTING FIRE REGULATIONS TO GO UP IN SMOKE!

At present, two of the principal elements of Fire Safety Legislation which apply in England and Wales include the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997 (as amended) the latter of which apply to most workplace areas and require employers to undertake a fire risk assessment; identify its principal conclusions and provide and maintain fire precautions necessary to ensure the safety of those entering the workplace and also to provide appropriate information, instruction and training to employees in respect of fire regulations and precautions.

The Fire Precautions Act 1971 requires certain buildings to secure a fire certificate including:- factories, offices and shops where more than 20 people are at work at any one time or where more than 10 persons are working at any one time other than on the Ground Floor.

As part of the issue of a Fire Certificate, the Fire Office will take undertake inspection of the premises to verify whether the existing means of escape are satisfactory and that there are appropriate installations in place for fighting of any fire and also that appropriate procedures/signage are in place.

All this will change in October 2006 when fire safety law will mirror more closely that of Health & Safety Legislation through the adoption of a risk assessment based approach to fire risks.

The changes will apply to most non-domestic properties and also common parts of residential developments including the common parts of houses in multiple occupations.

The duty to undertake the fire risk assessment will rest on the “responsible person” who is likely to be the employer as far as the work place is concerned or the person in control of the premises.

The principal duties of the responsible person are set out in Part 2 of the Order and include the following duties:-

- carry out an assessment of the risks to relevant persons for the purpose of identifying the general fire precautions needed at the premises;
- record the information if there are five or more employers;
- keep the fire risk assessment under review;
- take the general fire precautions that are identified in the risk assessment and ensure they are maintained;

- take special measures to eliminate or reduce risks from dangerous substances;
- provide information and training to employees on fire risks and safety measures.

Where a person has control i.e. an obligation of a nature relating to the maintenance or repair of any premises, including anything in or on premises or the safety of premises they will also bear responsibility to comply with the above duties to the extent that they exercise such control.

The Fire Risk Assessment Survey

The responsible person must consider what risks arise to “Relevant persons” when carrying out the fire risk assessment – such persons would include:-

- any person who is or may be lawfully on the premises; and
- any person in the immediate vicinity of the premises who is at risk from a fire on the premises; and
- fire fighters on premises carrying out fire authority duties – other than fire fighting or carrying out rescues from fire.

It is important to note that the responsible person will be liable to ensure that the party undertaking the fire risk assessment survey is of sufficient competence and properly qualified to undertake such work. A failure to ensure this could render the responsible person liable for prosecution under the Order for any shortfall in the content of a fire risk assessment survey; likewise, a responsible person has a need to nominate “competent person(s)” to undertake certain aspects of the duties e.g. in carrying out preventative and protected measures. If the person appointed is not competent then the responsible person may be in breach of their duty in this respect also.

Following completion of the fire risk assessment survey it is important that any such documentation is regularly reviewed especially when alterations are made to the premises or the parties’ change.

How is this to be enforced?

The principal enforcing body will remain the Fire Authority who will have the power to issue three types of Notices:-

- an Enforcement Notice - that will specify which aspect of the Order has not been complied with and may include what action might be taken to remedy the breach;
- a Prohibition Notice - in cases of urgent need to prohibit or restrict use of premises until such time as they have been made safe;
- an Alterations Notice - in cases where premises constitute a serious risk to relevant persons or could pose a serious risk if a change were made to them or to the use to which they are put – this would require the Fire Authority to be notified of any proposed changes so that they can re-assess where the premises should feature in the Authority’s risk-based inspection programme.

Whilst there is a right of appeal against the notices, failure to comply with any of the notices or a liability under the Order is an offence which is punishable by a maximum penalty of up to £5,000 in the Magistrates' Courts or on reference to the Crown Court an unlimited fine or imprisonment for up to two years - or both!

What are the implications for landlords and tenants?

It is expected that in buildings in multiple occupation there will be more than one "responsible person" i.e. there will be a number of occupiers with responsibility for their individual workplace areas but likewise a landlord with direct responsibility for the common parts. Under the provisions of the Order, where two or more responsible persons have responsibilities in respect of a building they are required to coordinate and cooperate with each other in attending to their respective responsibilities. As a result, one of the responsible persons is likely to be considered liable for prompting and initiating the procedures involved and realistically this will be the landlord. Some have indicated that as best practice, a landlord should undertake regular checks of its tenants to ensure that they are complying with the provisions of the Order and regularly review their assessments.

Managing agents too may consider they also "exercise control" over premises on behalf of their clients as do contractors who exercise different but allied responsibilities.

All this will necessitate a review of practices and procedures by landlords, tenants and managing agents with a view to cooperating with the requirements of the Order.

For all further information and particulars please contact:

Richard Hutt TD BSc, Dip Prop Inv, MBA FRICS
Director
DDI: +44 (0) 20 7471 0421
richard.hutt@alphaproperty.co.uk

Robert Dickson MCIWEM
Director
DDI: +44 (0) 20 7471 0422
robert.dickson@alphaproperty.co.uk

**The Quadrangle
49 Atalanta Street
London SW6 6TU**

Tel: +44 (0) 20 7471 0420
Fax: +44 90) 20 7386 8965

www.alphaproperty.co.uk



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