

# FIRE CERTIFICATES GO UP IN SMOKE

September 2006

## New fire safety legislation

The Regulatory Reform (Fire Safety) Order 2005 (**Order**), which was originally intended to come into force on 1 April 2006, will now take effect on **1 October 2006** replacing existing fire safety legislation in England and Wales. Fire certificates will no longer be required and will no longer have any legal status.

The new Order will apply to all non-domestic premises, including the voluntary sector, the common parts of residential developments and premises occupied by the self-employed (being separate from their homes). The Order does not introduce new concepts but consolidates existing legislation, with the main emphasis being on fire prevention. It is hoped that the new regime will be simpler to follow and easier to administer by the relevant authorities.

## Who is liable to comply?

Compliance with the new statutory provisions will fall to the "responsible person", namely:

- for a workplace - the employer, if the workplace premises are under the employer's control; and
- otherwise - the person in control of the premises if that person is carrying out a trade/business at the premises, or if that person is not carrying out such a trade/business, then the owner.

A person has "control" of premises if they have any repair or maintenance obligations or any responsibilities relating to safety. This could be the owner, the occupier, the managing agents or even contractors with responsibility for maintenance of fire precautions. It will be possible for a building to have more than one responsible person (eg. if a building owner lets out one floor to a tenant, then the building owner will be the responsible person for the whole building, except the floor let to the tenant). If there is more than one responsible person in any type of premises, all must take reasonable steps to work with each other.

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## **Duties to be observed**

The main duties imposed on the responsible person are:

- a duty to carry out a fire risk assessment, to implement the resulting fire precaution recommendations and to keep the risk assessment under review;
- a general duty to ensure the safety of employees (so far as reasonably practicable) and to take reasonable fire precautions to ensure the safety of the premises; and
- a number of specific duties in relation to the fire precautions to be taken.

Employers should already have carried out a fire risk assessment in order to comply with the current fire precautions regulations in relation to workplaces, but when the new Order comes into force employers must regularly review their risk assessments in light of their new duties.

## **Failure to comply**

The main enforcing body will normally be the fire authority, who will carry out premises inspections as part of their risk management plan. The fire authority will have the power to issue enforcement notices and prohibition notices where there has been a breach of the Order and also alterations notices requiring the responsible person to notify them of any proposed change of use or change to the fire precautions in place.

Failure to comply with any notice served or any duty under the Order will be an offence punishable by a maximum £5,000 fine imposed by Magistrates or an unlimited fine and/or imprisonment of up to two years imposed by the Crown Court.

## **Guidance and conclusion**

The Department for Communities and Local Government have published guidance notes for various types of premises e.g. offices and shops, factories and warehouses, healthcare premises etc and these can be found on their website at <http://www.communities.gov.uk/index.asp?id=1162101>.

Employers and all others that will be affected by the Order will need to take note of the new fire safety duties to be imposed on them and ensure these are complied with.

## **For more information please contact**

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