

THE REGULATORY REFORM (FIRE SAFETY) ORDER STATEMENT BY THE OFFICE OF THE DEPUTY PRIME MINISTER

INTRODUCTION

1. This statement is laid before Parliament in accordance with section 6 of the Regulatory Reform Act 2001 ("the 2001 Act") together with the draft of the Regulatory Reform (Fire Safety) Order 2005 ("the draft Order") which is proposed to be made under section 1 of that Act. The purpose of the draft Order is to reform the law relating to general fire safety in non-domestic premises.

BACKGROUND

2. The Government's consultative document "A consultation paper on reform of fire safety legislation" (published 22 July 2002) set out the Government's proposals.
3. A proposal in the form of a draft Regulatory Reform Order was laid before Parliament on 10th May 2004. The purpose of the draft Order is to reform the law relating to general fire safety in non-domestic premises. The aim of the proposed reform is to consolidate and rationalise much of the existing fire safety legislation (currently scattered across a large number of statutes and secondary legislation) into one Order. The reform would maintain and enhance the protection afforded to users of premises (and others who might be affected by a fire on the premises) by the existing legislation. It would not impose significant additional burdens as many of the proposed duties in the draft Order replicate existing obligations.
4. Following 60 days scrutiny, and having taken account of oral and written representations made, the Commons Regulatory Reform Committee (RRC) has recommended that the proposed Regulatory Reform (Fire Safety) Order should be taken forward subject to amendments proposed at paragraphs 78, 82, 88, 104, 119, 127, 169, 170, 174 and 226 of their report (11th report of session 2003-04 (HC264)). In addition, the RRC has made seven further recommendations (paragraphs 37, 38, 103, 163, 166, 219, 237 and 240).
5. The Lords Delegated Powers and Regulatory Reform Committee (DPRRC) also recommend the Order be progressed, again subject to amendments. Three amendments are proposed at paragraphs 52, 58 and 65 of their report (27th Report of Session 2003-04 (HL 153)). The recommendations are very similar to three of the Commons recommendations. The DPRRC also request an assurance about consistency with equivalent provision for Scotland.

OTHER CONSIDERATIONS

6. Though satisfied with the adequacy of the consultation and the account that the Department took of it, the RRC consider that the Department's initial account of the consultation process and the issues raised as a result of that consultation, as set out in the explanatory statement, fell below the standard of information which the Committee believes should have been provided to Parliament for this proposed Order (Commons paragraph 153). The Department accepts and notes the Committee's comments for future Regulatory Reform Order work.

RECOMMENDATIONS THE COMMITTEES CONSIDER NECESSARY IF THE REGULATORY REFORM (FIRE SAFETY) ORDER IS TO BE PROGRESSED

7. **Commons paragraph 78** – the RRC express concern at the possible existence in the draft Order of a possible statutory bar to the enforcement of fire safety requirements (pursuant to articles 13 and 14 of the draft Order) which are required to be included in buildings by virtue of building regulations, but which have not been included.
8. The Committee were concerned that the present regime has the advantage of certainty, while the proposed regime introduces an element of discretion into determining the provision of fire-fighting and fire detection equipment and fire escapes by using the term “where necessary”.
9. The Department has reviewed articles 13 and 14 of the draft Order. It can find no statutory bar to enforcement if measures are necessary under the draft Order. However, the Department notes that the view of a statutory bar may arise from the term “where necessary”.
10. During evidence given to the RRC, the Chief Fire Officers' Association (CFOA) referred to the “statutory bar” contained in section 13 of the Fire Precautions Act 1971. The effect of section 13 is to prevent the fire authority from requiring additional fire precautions to be put in place if the premises concerned were constructed according to Building Regulations and the precaution could have been, but were not required under Building Regulations. CFOA were in fact welcoming the fact that the Draft Order does not contain a statutory bar. Confusion may have arisen due to references to the bar in section 13 of the Fire Precautions Act 1971.
11. In order to assist the Committee's understanding, the Department wishes to stress that the expression “where necessary” in the Draft Order, with regard to fire-fighting equipment and fire exits, relates to the present circumstances, and not risks that may, or may not, have existed or reasonably been foreseen at a previous point in time for example at the time premises are constructed. The Draft Order

provides that the consideration is of the risks which actually exist, and the precautions that are necessary now in the light of those risks and that enforcement can be conducted on that basis.

12. Consequently no amendments have been made to the draft Order.
13. **Commons paragraph 82** - the proposed Draft Order should be amended to provide a necessary level of protection from fire for fire-fighters on premises in pursuit of fire authority duties other than fire-fighting or carrying out rescues from fire.
14. The Department accepts the Committee's recommendation. The Draft Order has been amended so that fire-fighters will be treated as relevant persons when not engaged on emergency duties. Therefore, for example, whilst giving advice, collecting operational intelligence and conducting fire safety inspections, they will be regarded as relevant persons.

Amendment to article 2 "relevant persons"

15. Article 2 has been redrafted to provide that the definition of relevant persons *"does not include a fire-fighter who is carrying out his duties in relation to a function of a fire and rescue authority under section 7, 8 or 9 of the Fire and Rescue Services Act 2004 (fire-fighting, road traffic accidents and other emergencies)."*
16. **Commons paragraph 88** – the Draft Order should be amended to provide that in all cases "place of safety" should be defined to ensure that the meaning of "a place of ultimate safety" is explicit.
17. The Department considers that legally the Draft Order requires the responsible person to consider the risks to persons from fire "in and around any place for which they have responsibility." The requirement to provide a means of escape to a place of safety could not be construed as providing a means of escape to any area in the vicinity of premises where relevant persons would still be at risk in case of fire.
18. Nonetheless, the Department accepts, for the purpose of clarity, the RRC's recommendation to further define "place of safety". Amendments have been made to clarify that a place of safety means a safe area beyond the premises.
19. Furthermore, the Department accepts the Committee's recommendation 88(b) that all editions of guidance to be issued to responsible persons will make clear the meaning of "place of safety" to comply with their obligations under the proposed Draft Order.

Amendment to Article 2 “place of safety”

20. Article 2 has been redrafted to provide “*place of safety*” in relation to premises, means a safe area beyond the premises.
21. **Commons paragraph 104/Lords paragraph 52** recommend that article 26 of the draft Order be amended to provide that the Secretary of State must issue guidance to fire authorities on their enforcement of the provisions of the Order, that he must monitor the enforcement activity of fire authorities and that he may issue directions to fire authorities on their enforcement activity.
22. The Department understands that the concern is a general one about the lack of legislative force behind some elements of the new regime and in part a specific concern that the existing duty to inspect, contained in section 5(3) of the Fire Precautions Act 1971, is not directly re-implemented in the Order.
23. The Department has again considered carefully whether there is a need to amend the regime in the ways suggested by the Committees in order to ensure that necessary protection is maintained. It has concluded that the Order and the Fire and Rescue Services Act 2004, together should provide the assurance that the Committees seek.
24. The Department has again reviewed section 5(3) of the Fire Precautions Act 1971. It is satisfied that the protection afforded by section 5(3) of the 1971 Act is provided by the Order in a different form. Article 26 of the Order sets out the basic duty to enforce. And the duty to make whatever inspections are needed in order for the enforcement authority to be satisfied that the provisions of the Order are being complied with is implied in that duty. Article 22 (co-operation and co-ordination), 27 (powers of Inspectors, including powers of entry), 32 (offences) reinforce this view. The amendments that have been made to Articles 17 and 38 are also relevant (see paragraphs 73 to 78 below). As a result the Order implies a duty to inspect premises and – where relevant - also to inspect associated premises, in order to make sure that the Order is complied with in respect of premises covered by the Order.
25. In addition, the 2004 Act places the Secretary of State under a duty to publish the National Framework – which must set out priorities and objectives for fire and rescue authorities in connection with the discharge of their functions. This includes enforcement of fire safety law. The National Framework may contain guidance in connection with the discharge of functions – and guidance on inspection has already been issued. In addition to this, the proposed Order also requires enforcing authorities to have due regard to such guidance as the Secretary of State may issue about enforcement, and guidance under that requirement is currently being prepared by officials for all those who have enforcement responsibility under the Order. The

Department is also preparing guidance on the Order which is directed to business.

26. The 2004 Act also provides for the appointment of inspectors for the purpose of obtaining information about the manner in which fire and rescue authorities are discharging their functions. In addition fire and rescue authorities are subject to Comprehensive Performance Assessment by the Audit Commission. Best Value Performance Indicators (BVPs) also provide data in terms of individual FRAs' performance in specific areas. A new BVPI will be introduced in 2005/6 to monitor the effectiveness of fire safety work in non-domestic premises.
27. Finally the 2004 Act provides powers for the Secretary of State to direct fire authorities who are failing, or appear likely to fail, to act in accordance with the National Framework. The power is a wide one, namely to require an authority to do something; or to stop doing something; or not to do something.
28. Any additional provisions included in the Order in relation to guidance, monitoring and directions would, inevitably overlap the 2004 Act provisions in some respects. This is undesirable.
29. In the light of these considerations, the Department has decided not to accept the Committees' recommendations in these 3 respects. It has, however, decided to make a small amendment to Article 27(1)(b)(i) to make clear that the powers of inspectors extend to any premises which it is necessary to inspect to ensure that the provisions of the Order are complied with.

Amendment made to article 27(1)(b)(i)

30. Replace the reference to "the premises" in the first line with "*any premises*".
31. **Commons paragraph 119** - the Draft Order should enable enforcement action to be taken against any person who has a duty in respect of premises under article 5(3) of the Draft Order.
32. During Parliamentary Scrutiny, the RRC noted that the drafting of the Draft Order would not allow enforcement action to be taken against persons with duties or obligations under the Draft Order if that person was not a responsible person as defined.
33. The Department agrees that articles 30, 31, and 32(1) were too restrictively drafted. Amendments to articles 30(1), 30 and 32(1) have been made.

Amendments made to articles 30, 31 and 32(1)

34. Article 30(1) replacing “responsible person” with “*responsible person or any other person mentioned in article 5(3)*”.
Article 31(1) additional wording inserted “...responsible person or any other person mentioned in article 5(3),”
Article 32(1) replacing “responsible person” with “*responsible person or any other person mentioned in article 5(3)*”.
35. **Commons paragraph 127/ Lords paragraph 58** – that the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, as amended by the 1991 and 1994 Regulations be retained, and that Schedule 5 to the draft Order be amended to remove the reference to the 1989, 1991 and 1994 Regulations.
36. The Department remains of the view that necessary protection would be maintained by the Draft Order when linked to other legislation – such as the Railway Safety Case Regulations 2000.
37. However, to ensure public certainty and confidence, the Department accepts the view expressed by both Committees that if the highly prescriptive 1989 regulations are to be revoked then substantive guidance must be in place so that the protection can clearly be seen to be maintained. Consequently, the regulations will be retained on a temporary basis and only removed once guidance has been produced in consultation with all parties. We have therefore removed reference to the regulations from Schedule 5.
38. **Commons paragraph 169** – Article 29 to be amended to reflect the RRC’s opinion that the drafting of article 29(1)(b) does not adequately reflect the Department’s intention that the article should not confer an unlimited power to serve an alterations notice.
39. In the Department’s view, under the current draft, an alterations notice could only be served in relation to premises which either constituted a serious risk to relevant persons or where the likelihood of such a risk is reasonably foreseeable, due to the nature of the premises and their use. The RRC however recommends that article 29 be amended so as not to confer an unlimited power to serve an alterations notice by means of the following amendments;
- a) the power to serve an alterations notice should apply where the authority is of the opinion that the premises are as stated, and
 - b) the alterations notice should state the authority’s opinion and specify the matters which, in the authority’s opinion, give, or may give, rise to a serious risk.
40. The Department accepts the RRC’s recommended amendments and have redrafted accordingly.

Amendments made to article 29

41. Article 29(1) reformulated to read:

“The enforcing authority may serve on the responsible person or any other person mentioned in article 5(3) a notice (in this Order referred to as “an alterations notice”) if the authority is of the opinion that the premises -“

42. Article 29(2) now reads as follows:

“(2) An alterations notice must-

*(a) “state that the enforcing authority is of the opinion referred to in (1); and
(b) specify the matters which in their opinion, constitute a risk to relevant persons or may constitute such a risk if a change is made to the premises or the use to which they are put.”*

43. **Commons paragraph 170** – Article 29(1)(b) requires minor re-drafting from “any change” to “a change”.

44. The Department accepts this amendment and has redrafted accordingly.

Amendment to Article 29(1)(b)

45. Article 29(1)(b) is amended to read “... risk if *a change is made...*”.

46. **Commons paragraph 174** – recommends amending the definition of “safety” in article 2 to make its extent more explicit.

47. In the original draft of the draft Order, “safety” was defined to mean “the safety of persons in the event of fire.” The Department does not see the necessity to change that definition as both fire precautions and fire prevention are caught by virtue of the definition of general fire precautions in article 4. Consequently, the general duty under article 8 means that persons are to be safe by virtue of fire prevention and fire protection measures. It is however, apparent that the matter could be further clarified and consequently, the Department accepts the Committee’s recommendation.

Amendment to article 2 “safety”

48. Definition of “safety” is amended to read “the safety of persons in *respect of harm caused by fire*”.

49. **Commons paragraph 226** – recommends that article 51 of the Draft Order should be amended to provide that articles 9 to 22 and 45, if designated as subordinate provisions, should be amendable by means of the affirmative resolution procedure. **Lords paragraph 65** – recommends that the draft order should not include article 51 as drafted as only technical or procedural provisions should be designated for future amendment by statutory instrument under the negative or affirmative resolution procedures.
50. The Department has therefore reduced the proposed designation to those elements of the Draft Order that it considers are technical or procedural within the context of the overarching principles of the Draft Order. These are listed below with a brief summary of the reason for the Departments conclusion that the matter is technical or procedural.
51. The Department intends a coming into force date of 1st April 2006 as that is when it expects the RRO will come into force. However, that is reliant upon the guidance to the RRO being produced 12 weeks in advance of that date to enable those affected to become familiar with the RRO before it takes affect. The Department has involved the stakeholders in the production of the guidance, which is expected to be detailed, and has engaged contractors to write the guidance. The Department recognises that obtaining agreement to final guidance documents could take longer than envisaged. For the 12 week gap between publication and coming into force to be honoured it could prove necessary for the coming into force to be delayed. The Department takes the view that coming into force is a procedural matter and that it would be prudent to designate article 1(3), as far as coming into force is concerned, as a subordinate provision. Article 1 will come into force on the day after the day on which the Order is made so that in the event that the guidance is not ready 12 weeks in advance of 1st April 2006 that date can amended by further order. The Department consider that for such a designation the negative procedure would apply to an order to amend the date of coming into force.
52. The Department does not consider that it would be appropriate to delay the passage of the RRO through the statutory Parliamentary process because this would ultimately delay making of the Order and so give rise to the very real probability of new legislation affecting the Order by virtue of Section 1(4) of the Regulatory Reform Act.
53. Article 2 provides a detailed definition of “relevant local authority” which may need subsequent amendment by virtue of other legislative changes and therefore, the need to amend the definition in the Draft Order. The Department proposes to designate Article 2 “relevant local authority”.

54. Paragraphs (6) and (7) of Article 9 are procedural rules that explain when a risk assessment must be recorded. The Department therefore proposes to designate Article 9(6) and (7) as subordinate provisions.
55. Article 10 provides the principle for the responsible person to implement any preventive and protective measures - the procedural rules for doing so are laid out in Part 3 of Schedule 1. Therefore, the Department proposes to designate Part 3 of Schedule 1.
56. Article 11(2) provides procedural rules as to when details of fire safety arrangements must be recorded. The Department proposes to designate Article 11(2).
57. Article 14(2) provides technical details supporting the principle of article 14(1) (the responsible person must ensure that routes to emergency exits from premises are kept clear at all times is carried out). The Department proposes to designate Article 14(2)
58. Article 16(1) (a) to (d) provide technical and procedural details of how a responsible person is to meet the requirement to ensure the safety of persons arising from an accident, incident or emergency related to the presence of dangerous substances in or on the premises. The Department proposes to designate these technical and procedural matters.
59. Article 16(4) provides for cases where the principles of Article 16 need not be complied with (in common with dis-application in health and safety law). This is a procedural matter and the Department therefore proposes to designate Article 16(4).
60. Article 18(6) and (7) dis-apply the principle of Article 18 (appointment of competent persons) from the self-employed and from employers who are in partnership where one of those persons is competent for the purposes of the Order. This is a technical and procedural matter. These derogations could be added to or removed as circumstances change. This would not affect the general principle of appointment of a competent person under Article 18 and the Department proposes to designate 18(6) and (7) as subordinate provisions.
61. Article 25 provides for the appointment of enforcing authorities. This is necessary for the purposes of Article 26, which provides the principle that appointed authorities must enforce the Order. Who should enforce for particular premises will change according to circumstances. Accordingly, the Department proposes to designate Article 25.
62. Article 45(3) is a technical and procedural matter pursuant to the principle of the duty imposed by Article 45(1) (duty to consult enforcing authority before passing plans) apply. The Department proposes to designate Article 45(3).

63. Article 49 provides for how the RRO will apply to the Crown and the Houses of Parliament (and consequently to the armed forces by virtue of article 50). This is a procedural matter which will be liable to change when the Government takes forward its commitment to remove Crown immunity from general fire safety and health and safety laws. Consequently the Department proposes to designate Article 49.
64. Schedule 1 is a technical and procedural matter pursuant to the principle of the duties imposed by Part 1, under Article 9(2); Part 2, under Article 9(5), Part 3, under Article 10; and Part 4, under Article 12. The Department proposes to designate these technical and procedural matters.
65. The Department ask the Committee to note that it considers that the matters the RRC allowed as appropriate for negative resolution procedure would be likely to be linked to matters the RRC recommended for affirmative resolution procedure. To avoid the need for separate Orders, to the extent those matters are now proposed for designation all, except in relation to article 1(3) (see paragraph 51 above), are proposed for affirmative resolution.
66. The DPRRC wished to take account of the views of those consulted in considering the Department's revised proposal. The consultation document raised the question of designation of subordinate provisions at paragraph 5.4 and the question following paragraph 5.6. Respondents favoured provision to allow for removal of Crown immunity (see paragraph 61 above). Only five respondents offered comment on other possible subordinate provisions. These were fire authorities who favoured flexibility being built into the RRO but who did not offer views on the specific provisions to which such flexibility should apply. The Department also raised (in paragraphs 4.7 – 4.10) the degree of flexibility that the Secretary of State should have to amend the new regime by means of statutory instruments in the light of new circumstances. Responses were overwhelmingly in favour of flexibility to take care of developing situations. In the light of this, we have good reason to believe that the restricted list of subordinate provisions would not be regarded as excessive by stakeholders.
67. Article 51, as amended, reads as follows:
- “(1) For the purposes of section 4(3) of the Regulatory Reform Act 2001() (subordinate provisions) the following are designated as subordinate provisions—*
- (a) article 1(3);*
 - (b) in article 2, the definition of “relevant local authority”;*
 - (c) article 9(6) and (7);*
 - (d) in article 10, the reference to “Part 3 of Schedule 1”;*
 - (e) article 11(2);*
 - (f) article 14(2);*
 - (g) article 16(1)(a) to (d);*

- (h) article 16(4);*
- (i) article 18(6) and (7);*
- (j) article 25;*
- (k) article 45(3); and*
- (l) Schedule 1.*

(2) A subordinate provisions order made in relation to article 1(3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A subordinate provisions order made in relation to any of the provisions mentioned in article 51(1)(b) to (l) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

OTHER MATTERS RAISED BY THE COMMITTEES

68. **Commons paragraph 37** - recommend that, should the Draft Order and the Scottish Parliament Bill both pass, the Department should ensure that their provisions come into effect simultaneously. **Lords paragraph 17 (Commons paragraph 38)** - the Committees would wish to be assured by the Department “that those matters which are outside the legislative competence of the Scottish Parliament and are not covered by the proposal will be made consistent with the proposed fire safety regime as soon as possible.”
69. The Department wishes to assure the Committees that ODPM are working closely with Scottish Authorities to ensure that reform of general fire safety law can be achieved in full in Scotland and as close together in time as possible, subject to the processes of the two Parliaments.
70. **Commons paragraph 57** – the RRC consider that the Government should find time for an adjournment debate on fire service reform.
71. The Government accepts the Committee recommendation. An adjournment debate has been scheduled for 27 January 2005.
72. **Commons paragraph 77 and (238)** – the RRC recommend that articles 13 and 14 will only maintain protection if guidance on the definition of “where necessary” is provided in guidance to enforcers and the public.
73. The Department wishes to assure the Committee that we shall be providing guidance to “responsible persons” and enforcement authorities on the meaning of “where necessary”.
74. **Commons paragraph 163** - recommend that the Department consider amending or clarifying the proposed Order to require that the responsible person must maintain all facilities, equipment and devices which may affect the common parts of a house in multiple occupation

(HMO), whether or not they fall within parts of the HMO which are defined as “domestic premises”.

75. The Department accepts the principle of the argument that where a common fire precaution extends beyond the common parts of domestic premises in multiple occupation, then the maintenance requirement should cover the system or precaution as a whole and not just the parts in common areas. The Department takes the view that this principle should apply to all types of premises which contain shared dwellings, not solely applying to HMOs, but also to purpose- built flats etc. Therefore, the Department has not limited amendments in the draft Order solely to HMOs.
76. The Department does not think that it was the committee’s intention to make the responsible person responsible for the maintenance of smoke alarms in domestic premises which may have been installed by the occupier. If that were the Committee’s intention, then the Department would suggest that this would go too far. For example, the responsible person would be legally liable if the tenant took the battery out of a domestic smoke alarm – even though the responsible person could not know this had happened and may not even know the smoke alarm exists because it was installed by the tenant. The Department do not consider that this was the intention of the Committee and have drafted accordingly. Article 17 of the Draft Order has been redrafted to require all parts of common fire precautions, (including precautions which directly affect common means of escape), to be maintained – even if they are partly located in private accommodation. Article 38, which deals with precautions to safeguard the safety of fire fighters, has been similarly amended. The Committee may wish to note that this necessitates requiring the occupier of the private premises to co-operate with the responsible person. No direct offence is associated with a failure by the occupier of private domestic premises to co-operate with a responsible person. However, we would expect any contract/agreement (whether in the terms of a lease, tenancy or licence agreement) to allow access to the responsible person to enable him to maintain any fire equipment extending from the common parts to the domestic premises. In the event, that such agreements were silent in respect of the right of access to maintain such equipment, then we would expect that the courts would be prepared to recognise the statutory duty contained in articles 17(4) and 38(4), taking account of the public policy, and allow the responsible person, subject to satisfying the evidential burden, to enforce the duty.

Amendments to article 17 and 38

77. Article 17 and 38 adds four paragraphs;

“(2) Where the premises form part of a building, the responsible person may make arrangements with the occupier of any other premises

forming part of the building for the purpose of ensuring that the requirements of paragraph (1) are met.

(3) Paragraph (2) applies even if other premises are not premises to which this Order applies.

(4) The occupier of the other premises must co-operate with the responsible person for the purposes of paragraph (2).

(5) Where the occupier of the other premises is not also the owner of those premises, the references to the occupier in paragraphs (2) and (4) are taken to be references to both the occupier and the owner.”

78. **Commons paragraph 166** – recommend that the Secretary of State issue guidance to fire authorities on the exercise of the power to serve alterations notices, and the definition of the term “serious risk”.
79. The Department accepts the RRC’s recommendation, and offers assurance that this will be done.
80. **Commons paragraph 219** – the RRC raise a substantive concern about the Regulatory Impact Assessment in that the table of quantifiable economic benefits on page 13 of the assessment does not include one off or set up costs.
81. The Department notes the Committee’s concern and considers that, in retrospect, the table would have been better placed two paragraphs earlier in the statement as it was intended to illustrate only economic benefits. One off set up costs as described by the Committee are dealt with in the third and fifth paragraphs of section 17 of the assessment.
82. **Commons paragraph 237** – recommends that the Department should provide entry level guidance to complement the detailed guidance booklets. The guidance documents should be drafted in plain English, and should be user-friendly and accessible.
83. The Department can assure the RRC we accept the recommendation. The Department will be providing an entry level guidance to fire safety responsibilities in the form of a leaflet. The document has been subject to stakeholder comments and is drafted in plain English. Identified premises will receive the leaflet prior to the proposed reform Order coming into force.
84. **Commons paragraph 238 - (see Commons paragraph 72)**
85. **Commons paragraph 240** – recommends that the Department amend the Draft Order for the Secretary of State to be placed under a statutory duty to issue guidance to the public on the implementation and interpretation of the Order.

86. The Department considers this to be unnecessary. The Minister and officials have already given a substantive commitment to produce guidance. The duty proposed would therefore have no additional benefit. The Government is already under a duty to inform the public about the law and what it means for them. To add this specific duty would be superfluous. The Government is committed to producing guidance for the public and for enforcers and has stated this.
87. In addition, while noting the Committee's comments at paragraph 238, the Department notes that a duty to issue guidance on interpretation of matters which may be the subject of legal proceedings in the courts would place the Secretary of State in a position whereby he may be seen as routinely available to give evidence in those legal proceedings - for either party to the proceedings.
88. Consequently, the Department has not taken forward the Committee's recommendation. It is the Department's practice to issue guidance on interpretation and implementation to enforcers (which is also available to the public). The Department offers a commitment that such guidance will be produced for the Draft Order.

REPRESENTATIONS MADE DURING THE PERIOD OF PARLIAMENTARY CONSIDERATION

89. The Department received no formal representations directly during the Scrutiny Period, but has taken note of representations received about the Committee recommendations when considering those recommendations.

OTHER MINOR AMENDMENTS TO THE DRAFT ORDER NOT YET MENTIONED

Article 2

90. The "meaning of fire authority", is amended to "*fire and rescue authorities mean a fire and rescue authority under the Fire and Rescue Services Act 2004.*" This is due to the original draft containing the reference to "fire authorities" defined as an authority discharging the functions of fire authority under the Fire Services Act 1947. Following the commencement of the 2004 Act, which repeals the 1947 Act, "All references to "fire authorities" or "fire brigades" in the draft Order, have been amended and substituted with "*fire and rescue authorities*".
91. Due to the repeal of section 24 of 1947 Act, amendment is made to the "meaning of fire inspector", which is redrafted to mean "*an inspector or assistant inspector appointed under section 28 of the Fire and Rescue Services Act 2004.*".

Article 4

92. In paragraph (2) the word "precautions" is changed to "*measures*". This is a minor drafting change to make it clear that the meaning of

“general fire precautions” does not include special, technical or organisational measures, where those measures relate to the work processes of the kind described in paragraph (2)(a) and (b).

Article 23

93. Paragraph (2) is removed as this was a duplication of the meaning of “safety”- which is defined in article 2.

Article 26

94. Article 26(3) has been amended to enable a fire and safety authority to enter into arrangements with the Office of Rail Regulation (ORR) to perform such of the authority’s functions as may be specified in arrangements entered into between them. This amendment reflects proposed changes to be introduced by clause 2 and Schedule 3 to the Railways Bill which make provision for and in connection with the transfer to the ORR of railway safety functions conferred by or under the Health and Safety at Work Act 1974. Should the proposed changes under the Railways Bill not take place, then the amendment made to article 26 would have no tangible effect. However, the amendment is needed now to allow proper function of the proposed changes if they are made.

Article 27

95. An amendment is made to paragraph (1) (c) to make it clear that “any records” includes plans. This makes it clear that inspectors can ask to see any plans of the premises (subject to the satisfying the requirements in paragraph (c)(i) and (ii)).

Article 31

96. The Department has amended section 6(1)(a) to except the extent of the exemption for domestic premises as far as article 31 (Prohibition notices) is concerned. Paragraph (10) to article 31 has been added to ensure that the powers under that article extend to buildings with shared domestic premises, such as HMOs. This provides that the powers, including the necessary powers of inspectors, currently available to the fire service under section 10 of the Fire Precautions Act 1971 (the 1971 Act) are properly reproduced in article 31 and corrects an omission from the draft Order thereby providing the necessary protection. Under section 10B of the 1971 Act it is an offence for any person to contravene a prohibition notice. This offence has been replicated in article 32 of the draft Order. It was the Department’s intention to ensure that the full extent of section 10 was properly replicated in article 31- as was previously conveyed to the Committees and has taken the opportunity to rectify this omission. Paragraph (10) of article 31 reads as follows:

“(10) In this article, “premises” includes domestic premises other than premises consisting of or comprised in a house which is occupied as a single private dwelling and article 27 (powers of inspectors) shall be construed accordingly.”

Article 32

97. Paragraph (1)(a) amended to read “*articles 8 to 22*” due to a typographical error in the previous draft laid before Parliament. In 32(1)(a) 21 changed to 22 to correct typographical error identified by the Committee.

Article 34

98. A minor amendment is made to the title of article 34– “Onus of providing limits of what is *practicable or* reasonably practicable.”. This redrafting reflects the tests contained in the Order, for example in article 15(2)(a) (first line) “so far as is practicable...” and article 12(1) (third line) “...or reduced as is reasonably practicable”.

Article 36

99. Paragraph (1)(a) is amended to read: “(a) *a responsible person or any other person mentioned in article 5(3)...*”. This change has been made in order to achieve a consistency of approach in accordance with the amendments recommended by the RRC at paragraph 119 of their recommendations (see paragraphs 31 to 34 above). Subsection (3) is amended (in the first line) to read as follows “The Secretary of State may, by notice in writing *to both parties*, require...” and replaces the words “to the enforcing authority and responsible person”. This minor amendment was made to tidy up the drafting.

Article 40

100. An amendment is made to article 40 replacing “must” with “may”. This is due to a typographical error in the original draft.

Article 42

101. An amendment is made to article 42 replacing paragraph (1)(a) with “*the licensing authority must ensure that the enforcing authority for the premises has the opportunity to make representations before issuing the licence*”. This redrafting makes the licensing authority’s duty consistent with the Licensing Act 2003. The previous draft of article 42(1)(a) stated that “the licensing authority must consult the enforcing authority for the premises before issuing the licence”.

Schedule 2 – Amendments of primary legislation

102. This Schedule includes amendments made by the Fire and Rescue Services Act 2004 to the amendments listed in the schedule of primary legislation. The schedule also includes changes (made since the draft Order was last laid) to the Licensing Act 2003 consequential to the repeal of the Fire Precautions Act 1971.

103. The Department brings to the Committees’ attention the fact that with the passing of the Housing Act 2004 there are amendments proposed under section 53 of that Act that amend statutory provisions which the draft Order reforms and therefore, section 1(4) of the Regulatory Reform Act 2001 (the RRA) may be at issue.

104. The purpose of the Housing Act amendments is explained in the annex to this explanatory statement. In effect, the Housing Act amendments remove the powers of local authorities in respect of regulating certain fire precautions as they apply to domestic/residential properties and the draft Order removes these powers in relation to non-domestic premises. In each case there will be a separate enforcement regime which will replace the amendments brought about by the Housing Act and draft Order. Therefore, although certain of their purposes are similar, the scope of each regime was deliberately drawn so that the Housing Act dealt with domestic premises and the draft RRO with non-domestic premises.

105. The annexed note sets out the detailed arguments using section 35(1) of the London Building Acts (Amendment) Act 1939 (the 1939 Act) as an example of why the provision to be amended by the Housing Act, e.g. section 35(1)(c)(i) of the 1939 Act, is a different provision to section 35(1)(c)(ii) or (iii) of that Act, i.e. the provisions to be amended by the draft Order. Accordingly, the Department take the view that there is a reasonable case for stating that these are distinct provisions for purposes of section 1(4) RRA and that therefore, the draft Order complies with that section.

106. As the Regulatory Reform Committee recognised in its First Special Report of session 2004-2005 the two-year rule “was incorporated into legislation to discourage over-frequent legislative amendments”. It should be noted that the legislation to be amended is at least 20 years old and they have remained untouched since inception. The reasons for the separate treatment of that legislation is explained in the annexed note.

107. One of the purposes of the draft RRO is to reform the piecemeal and sometimes inconsistent fire safety legislation. Although the draft RRO could largely achieve its objectives without the reform of the provisions in question it would mean that in respect of certain fire precaution measures there would be a dual enforcement regime with some local authorities able to take action under the current legislative provisions (most of which are over 20 years old) and at the same time there would be a separate regime under the RRO enforced by enforcement authorities. This confusion would in respect of the amendments at issue defeat the purpose of reforming the legislation, namely, with a view to remove or reduce burdens and to remove inconsistencies and anomalies.

Schedule 3 – Amendments of subordinate legislation.

108. There are a number of consequential amendments made by order under the Fire and Rescue Services Act 2004 which are relevant to the draft Order. These were anticipated in the draft that was last laid before Parliament. The consequential amendment order (SI 2004/3168) came into force on 30 December 2004.

COMING INTO FORCE DATE

109. Article 1 and article 51(1)(a) shall come into force on the day after the day on which the Order is made and the remaining provisions shall come into force on 1st April 2006.

PUBLICITY STRATEGY

110. The plan is to ensure the information reaches as broad an audience as possible:

- The Department will write to small to medium sized businesses (some 2 million) explaining the new law and including an entry level guide to risk assessment.
- The Department will publish a guidance leaflet to be produced for distribution by Fire & Rescue Authorities and other stakeholders to businesses.
- The Department is organising a series of seminars across England and Wales.
- The Department will run a paid publicity campaign which might, for example, include radio advertising, “advertorials” in trade press.
- The Department will place guidance on ODPM’s website.

OFFICE OF THE DEPUTY PRIME MINISTER
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