

# **Strategic Enforcement Guidance For The Scottish Fire And Rescue Service (SFRS)**

**February 2022**

## Part 3 Of The Fire (Scotland) Act 2005 And Associated Legislation

### Strategic Enforcement Guidance For The Scottish Fire And Rescue Service (SFRS)

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## DEFINITIONS

Definitions of terms used in this note:

- **The 2005 Act:** The Fire (Scotland) Act 2005 (as amended).
- **The 2006 Regulations:** The Fire Safety (Scotland) Regulations 2006.
- **Enforcement of Chapter 1 duties:** the duty to carry out the function of an enforcing authority by virtue of section 61(1) of the 2005 Act.
- **Enforcement:** All activities which fall within the scope of Part 3 of the 2005 Act. This includes all dealings with dutyholders which result in the service of Notices, reporting for prosecution or informal action concerning the provision of information and advice, either verbally or in writing.
- **Dutyholder:** Any person or organisation with compliance obligations by virtue of Chapter 1 of Part 3 of the 2005 Act.
- **Risk:** The potential (likelihood and consequence) for fire to cause harm to relevant persons ('relevant persons' is as defined in section 79 of the 2005 Act).
- **SFRS:** Scottish Fire and Rescue Service

## **INTRODUCTION**

1. This guidance supports SFRS fire safety enforcement activity by setting out general policy and principles which should be embraced when carrying out the function of a fire safety enforcing authority.

## **STATUS OF GUIDANCE NOTE**

2. Section 61(2) of the 2005 Act requires an enforcing authority to have regard to any guidance given by the Scottish Ministers when enforcing the Chapter 1 duties. This guidance is issued by Scottish Ministers and SFRS therefore require to have regard to it when planning and carrying out its Chapter 1 enforcement duties.

## **POWERS AND DUTIES**

3. Section 61 of the 2005 Act provides for SFRS to be an enforcing authority for the fire safety legislative regime introduced by Part 3 of the 2005 Act and associated regulations. The regime seeks principally to ensure the safety of persons in workplaces and other non-domestic premises in the event of fire. This enforcement function is not as wide ranging as other community safety activities and SFRS must operate within the limitations laid down in the legislation.
4. Section 35 of the 2005 Act allows SFRS to enter into arrangements for the provision of assistance in carrying out a function conferred by section 61. Section 36 of the 2005 Act allows SFRS to enter into arrangements with others for the performance of a function conferred by section 61. It is therefore for SFRS to determine to what extent, if any, it wishes to make arrangements for the carrying out of these functions by others or arrange assistance from others, under section 35 or 36, whether on a collaborative basis or otherwise.
5. Policies for enforcement of the Chapter 1 duties should reflect the fact that activities should be risk based. It is for SFRS to decide how the policy will form part of its wider community risk management plan and for it to show how its enforcement activities contribute to the plan.

6. The fire safety enforcement role should be balanced with wider premises based community safety activity. In determining this wider community safety role, SFRS may take into account a number of factors such as strategic importance of premises, potential heritage loss, potential environmental damage, service demand reduction, fire-fighting activities and community losses. However, in determining a policy for the enforcement of Chapter 1 duties, only the safety of relevant persons in event of fire should influence this policy.

## **RESOURCES**

7. SFRS should have in place a programme of enforcement audit for premises to assess dutyholders' compliance with responsibilities set out in Part 3 of the 2005 Act and in the 2006 Regulations. Such an audit programme should prioritise enforcement activities and resources should be targeted at premises which offer the greatest risk to the safety of relevant persons in the event of fire.
8. The purpose of enforcement is to:
  - promote and enable sustained compliance with the law;
  - ensure that action is taken to deal promptly with serious risk; and
  - ensure that dutyholders who fail in their obligations are held to account.
9. A scheduled audit programme should not include premises where the risk to life in event of fire is low, except as part of a limited sampling approach to test the risk assessment methodology or confirm compliance assumptions. Any limited sampling should be co-ordinated on a service wide basis, with the results analysed.
10. This guidance does not prescribe fixed frequencies for audits. Where periodic fixed term frequencies have been allocated according to a risk rating, it should be possible for SFRS to show how its resources are being applied.
11. Section 61(3) of the 2005 Act allows an enforcing authority to appoint enforcement officers. The enforcement of Chapter 1 duties requires to be undertaken principally by specialist staff dedicated to the fire safety enforcement role. The make-up of this cadre of staff is a matter for SFRS to determine but resources cannot be considered in terms of numbers alone. Succession planning should ensure that secondment opportunity and career progression is balanced against the need to retain a sufficiently qualified core of specialist staff.

## **POLICY AND PRINCIPLES**

12. SFRS should have a written policy or framework which should clearly set out the aims, standards and values that will be applied in carrying out its enforcement function. Policies and standards offer benchmarks against which actions and performance can be judged.
13. When planning and implementing fire safety activities it is necessary to be clear about the intended purpose of the activity and the legal constraints and criteria

which apply. No audit should take place without a reason. The interaction between enforcement activities and community safety activities and the potential liability for misunderstanding by the recipient of the activity, makes it important that SFRS has established procedures, that staff operate within legal powers and that the recipients of advice receive accurate and clear guidance and information. Accurate communication and reporting is extremely important.

## **Risk Based Approach**

14. Given that the policy on enforcement activity should be to focus primarily on those whose premises and activities give rise to the most serious risk to life from fire, SFRS should have a strategy and methodology that will identify and assess the risks for the purpose of allocating resources to carry out enforcement activity. Audit activity should be programmed using assessment of risk and focus on those premises where a compliance breach would have serious consequences and where there is the likelihood of such a breach.
15. The establishment of a risk profiling methodology will assist with decision making for policy determination, consistency and targeting to ensure best use of resources. A risk profiling methodology must assess and balance the likelihood of compliance failure, the seriousness of compliance failure and the dutyholders' past performance and current practice. The policy and methodology by which levels of risk and activity are determined, should be recorded, transparent and auditable. They must be open to public scrutiny and subject to regular review.
16. A risk profiling methodology will consider how different uses of premises compare in terms of risk and how levels of risk in different premises which are being put to the same use might be compared. It is necessary to consider levels of risk associated with generic premises types and factors which influence the assessment of risk within individual premises. The performance of generic types of premises will take into account the frequency of fires, fatalities and injuries by the type of occupancy. A generic hierarchy of risk in descending order may be:
  - Premises with sleeping accommodation for vulnerable occupants;
  - Other premises with sleeping accommodation;
  - Shops, public entertainment and assembly premises; and
  - Other types of premises.
17. An assessment of individual premises would include specific consideration of the following factors:
  - nature of the premises structure/building construction;
  - use of the premises;
  - number of occupants and occupant characteristics;
  - contents and processes undertaken;
  - potential causes of fire;
  - potential for fire spread;
  - fire safety measures provided;
  - standard of fire safety management; and

- history of fire involving the premises.

18. It is important that professional judgement is taken into account as part of the overall process. This allows the level of risk to be varied as a result of specific circumstances. The outcome of the risk profiling may be the categorising of premises into specific risk tiers.

### **Dealing With Compliance Failure**

19. The cost of compliance for business and other dutyholders should be minimised by ensuring that any action taken, or advice offered, is proportionate to the risk. As far as the law allows, account should be taken of the circumstances of the case and the attitude of the people involved when considering action. SFRS should, where possible, adopt a positive enabling approach by working collaboratively with dutyholders so that they can meet their legal obligations without unnecessary expense. This means clearly distinguishing between statutory requirements and recommendations about what may be desirable as good practice but not compulsory to meet legal requirements.

20. Immediate action may be required in cases of serious risk or to prevent evidence from being destroyed. An explanation of why such action is required should be given at the time. Where immediate action is not required, enforcement officers should provide the dutyholder with an opportunity to discuss the circumstances of the case. This should include a consideration of available options. Enforcement officers should then work with dutyholders to agree reasonable timescales to remedy non-compliance.

21. SFRS should have a procedure which establishes whether audit or enforcement is necessary in premises which have experienced a reported fire.

### **Consistency**

22. Consistency of approach means taking a similar approach in similar circumstances to achieve similar goals. SFRS should carry out its duties in line with the [Scottish Regulators' Strategic Code of Practice](#). Enforcement officers are expected to exercise their professional judgement to deal effectively with specific matters but, where possible, will follow guidance and procedures to promote consistency. They should work collaboratively with other authorities to achieve co-ordination to minimise unnecessary overlaps and time delays, wherever possible.

23. SFRS is required to have regard to [guidance](#) issued by Scottish Ministers to assist dutyholders with compliance. The guidance include benchmarks and enforcement officers should take these into account when making decisions about compliance issues, but these benchmarks are neither minimum nor recommended standards and should not be considered as such. The guidance can be accessed on the Fire and Rescue, non-domestic fire safety section of the Scottish Government Website: <https://www.gov.scot/policies/fire-and-rescue/non-domestic-fire-safety/> .

## **Advice**

24. The responsibility to assess and mitigate the fire risk to relevant persons in premises rests with the dutyholders: enforcement officers should not compromise their enforcement responsibilities by attempting to carry out a dutyholder's risk assessment. It is not appropriate for an enforcement officer to provide a prescriptive solution as the sole means of addressing deficiencies. However, educating, informing and advising dutyholders about their duties under fire safety legislation and seeking compliance with the law by offering information and advice both verbally and/or in writing should form a fundamental element of enforcement.
25. Section 8(2) of the 2005 Act requires SFRS to provide information and advice, on request, about fire safety. This should be seen as including information and advice about responsibilities under Part 3 of the 2005 Act. SFRS should provide free authoritative, accessible advice which will assist dutyholders to understand what is expected of them and on how to comply with their obligations. SFRS should, within the legal framework, discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

## **Accountability**

26. SFRS is accountable for the efficiency and effectiveness of its activities. Standards for service and performance should be drawn up and published after consultation with appropriate stakeholders and there should be a process for measuring performance against these standards each year. SFRS should incorporate its performance management of fire safety enforcement into its public performance reporting framework.
27. Staff should provide official identification, offer their name and contact details for further communications and provide a courteous, professional and efficient service.
28. There should be in place an effective and easily accessible mechanism for dealing with comments and handling complaints and disagreements with the aim of resolving issues quickly and effectively and to learn from the outcomes.
29. In cases where disputes cannot be resolved, the dispute determination process should be explained, with details of the process and the likely time scales involved. In addition, where there is a right of appeal against formal action, advice on the appeal mechanism should be clearly set out in writing and issued with the documentation.
30. Any response to a complaint relating to standards of fire safety should be subject to a level of enforcement in accordance with SFRS policy but the minimum response to a complaint about premises should involve a visit to establish whether serious risk exists which may require immediate action involving a prohibition or restriction.





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