

Enforcement Policy - Technical Fire Safety

Standard Operating Procedure No. TFS – 001

Document Overview: -

This document sets out the Technical Fire Safety (TFS) Enforcement policy and principles which Wiltshire Fire & Rescue Service (Wiltshire FRS) expects to follow.

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This document has been Equality Impact Assessed in accordance with Wiltshire FRS procedure. To view the assessment [click here](#).

1.0 Introduction

This is the strategy of the Wiltshire & Swindon Fire Authority for the provision of fire protection activities in support of the [Services Business Plan 2006-10](#) and the future Service Business Plan 2010-15.

This Policy is designed to underpin the Technical Fire Safety (TFS) Departments contribution to the Wiltshire FRS mission statement;

“To continue to provide an efficient and effective Fire & Rescue Service, protecting the people of Wiltshire and Swindon, by working together with others, to make our communities safer and stronger”.

1.1 The department has a part to play in contribution to all five strategic aims but has a specific part to play in the following strategic aims

- To create safer, stronger and more resilient communities.
- To protect our environment and heritage.

It is a strategic level framework document designed to ensure that our legal duties and expectations are met. Other policy documents to support this overarching strategy which provide details of processes and procedures should be referred to for more specific information.

1.2 Whilst it is recognised that there are various methods of achieving the goals specified, it is the outcomes of TFS activities that are crucial to the success of the organisation. The sections of this document are intended to specify the standards of service necessary to manage TFS activities efficiently, consistently and in accordance with internal and external expectations.

1.3 This strategy is in accordance with, and embodies, the [Regulators' Compliance Code](#) and the regulatory principles required under the [Legislative and Regulatory Reform Act 2006](#). These principles are; that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and they should be targeted only at cases where action is needed.

- The Service will not discriminate against any persons in the application of this policy or any subordinate procedures.
- An equality impact assessment has been completed and there are no findings.
- This policy is open under the [Freedom of Information Act 2000](#).

2.0 Legislation and Guidance Documents

This document pertains primarily to the following legislation:

- [The Regulatory Reform \(Fire Safety\) Order 2005](#).
- The Building Regulations 2000.
- The Construction (Design and Management) Regulations (CDM) 2007

- The Legislative and Regulatory Reform Act 2006

2.1 The following guidance documentation are utilised in support of this policy in respect of the above legislation.

- The Regulatory Reform (Fire Safety) Order 2005 – guidance note No. 1 – enforcement.
- The Regulatory Reform (Fire Safety) Order 2005 – guidance note No. 2 – determination of disputes.
- Suite of fire safety risk assessment guides issued by HM Government.
- Fire Authority Integrated Risk Management Planning (IRMP) guidance note 4 – A risk assessment based approach to managing a fire safety inspection programme.
- The Building Regulations 2000 Approved Document B (2006).
- Building Regulations and Fire Safety Procedural Guidance.
- The Regulators' Compliance Code – Statutory Code of Practice for Regulators.
- The Enforcement Management Model
- [The Enforcement Concordat](#)

3.0 Legislation Enforced by Wiltshire Fire and Rescue Service

3.1 The Regulatory Reform (Fire Safety) Order 2005

The Regulatory Reform (Fire Safety) Order 2005 (RR(FS)O) is the main fire safety legislation in England and Wales and imposes a duty on the Wiltshire and Swindon Fire Authority to enforce all provisions of the Order. The RR(FS)O applies to all non-domestic premises, including the common parts of blocks of flats or houses in multiple occupation. The responsible person for the premises, as defined in the RR(FS)O, must carry out a fire risk assessment that takes account of all persons who may be lawfully on, or in the vicinity of, the premises. This includes the employer, employees, self employed persons, charity or voluntary workers and members of the public.

Wiltshire FRS will enforce this legislation at all relevant premises that, whether audited as part of a programmed inspection, a complaint from a member of the public, following an incident on the premises or at the request of another enforcing authority.

3.2 The Construction, Design and Management Regulations 2007

Sections 39, 40 and 41 (in respect of fire) are enforced by Wiltshire FRS. These sections of the regulations pertain to the provision of, and maintenance of, suitable

and sufficient means of escape and associated precautions to be undertaken in an occupied premises being subject to material alterations.

3.2 Investigations

When undertaking investigations into failures to comply with legislative requirements for which Wiltshire FRS is the enforcing authority, the following legislation will be adhered to.

- Police and Criminal Evidence Act 1984
- Criminal Justice Act 1988 and 2003
- Criminal Procedure and Investigations Act 1996
- Human Rights Act 1998

4.0 Integrated Risk Management Planning (IRMP)

4.1 Targeting of Activities

Reducing risk to the community to make them safer is a core value of Wiltshire FRS and is reflected in the Services Business plan for 2006-10 and subsequent annual plans.

4.2 To assist in achieving this fire protection audits will be undertaken at premises to confirm compliance with legislation. Those premises receiving a planned audit will be selected using a risk based approach that is described in IRMP guidance note 4. Other data that can be taken into account to inform targeting may also include incidents of fire on the premises, known fire safety compliance levels of differing occupancy types and local intelligence. This will require the prioritising of workloads and the taking enforcement action according to the perceived level of risk within premises.

4.3 In addition to local risk information the Service's risk management solution, Community Fire Risk Management Information System (CFRMIS) will be used to support judgements and develop enforcement programmes. It is important to apply community knowledge when developing a delivery programme.

4.4 In support of the Service's IRMP the delivery Groups will ensure that regulatory effort is directed primarily towards those whose activities give rise to higher levels of risk to public safety where the hazards and risks are least well controlled. Further information can be found in the Service document entitled "[How Do We Target Our Risk Reduction Activities?](#)"

5.0 Fire Protection Advice & Enforcement

5.1 Audits and other visits (such as meetings to provide advice about compliance) will be targeted and will result from risk assessment. This reflects the Hampton principle of "no inspection without a reason". Greatest effort will therefore be focused where;

- failure to comply would pose a serious risk; and
- there is high likelihood of non-compliance.

However, there may be other more effective means of achieving compliance across the business sector, especially where it may be proven that poor compliance levels

exist. National research has shown that generally small and medium sized enterprises struggle to comply with regulation. Wiltshire FRS will consider the options to increase compliance levels, not only through inspection or audit but by offering advisory visits, educational seminars or workshops in a one-to-many arrangement when appropriate.

- 5.2 Community Safety Inspectors (CSI's) will be mindful of the need to achieve 'compliance' rather than simply discharging the acknowledged 'duty to enforce'. A competent and transparent Service offering timely and accessible advice to those willing to comply is more likely to result in a safer and more prosperous community than the continual blunt application of legislative enforcement measures.
- 5.3 Through adhering to the Regulators Compliance Code, Wiltshire FRS will ensure that;
- All legal requirements will be communicated to businesses, and
 - Clear, concise and accessible information, advice and guidance, which meet the needs of businesses, will be provided to help them meet their obligations.
- 5.4 This does not preclude the need for the responsible person to appoint one or more competent persons as required by the RR(FS)O. This is especially pertinent for large or particularly complex properties where specialist or professional advice may need to be required.
- 5.5 Managers authorising formal enforcement measures will be mindful that perpetual and unscrupulous offenders will face harsh consequences whilst those who are shown to be willing to comply will receive due attention in terms of information and advice.
- 5.6 Enforcement notices, prohibition notices and alterations notices will be authorised and signed by a designated manager. These will be suitably qualified and experienced managers not below the role of Station Manager (B). Such managers must also be duly authorised to carry out this function by way of written authorisation by the Chief Fire Officer.

Furthermore due to the immediate nature and potential impact of a prohibition notice, the designated manager serving will consult a Brigade Manager of Wiltshire FRS before serving the notice.

- 5.7 The enforcement sanctions will be subjected to the principles set out within the Enforcement Management Model (EMM) and any subsequent action will be applied in accordance with the principles of the 'Compliance Code'. This will ensure that managers are able to apply meaningful sanctions whilst having the confidence that their justification and accountability remains safeguarded. It also ensures that officers are mindful of the cultural and social sensitivities of the environment within which they are enforcing.
- 5.8 Purpose Of Audits

Audits of premises are carried out to:

- Ensure compliance with the provisions of the Regulatory Reform (Fire Safety) Order 2005.

- Assist organisations to comply with their legislative responsibilities.
- Give advice regarding appropriate standards of fire protection and potential sources of information for the responsible person.
- Gathering of risk information to ensure that resources can be appropriately allocated and to ensure accurate integrated risk management planning, including the transfer of information to operations.
- Fire protection audits will be completed using the Chief Fire Officers Association (CFOA) model; this will ensure consistency of approach throughout Wiltshire FRS and ensure that decisions made are transparent and auditable.

5.9 Operational Availability

Operational officers carrying out fire protection activities will have regard for the Services emergency response standards and maintain appropriate availability.

6.0 Regulators' Compliance Code

6.1 Wiltshire Fire and Rescue Service carry out fire protection enforcement work on behalf of the Wiltshire & Swindon Fire Authority. As part of the 'duty to enforce' the RR(FS)O, advice is given about fire precautions to businesses and members of the public for the purpose of achieving compliance across the full spectrum of non-domestic buildings.

6.2 The Service is committed to the principles of reducing administrative burdens, effective inspection and enforcement; this is currently achieved by discharging the duty to comply with the national Regulators Compliance Code, as issued by the Department for Business Enterprise and Regulatory Reform. Consequently, the Service is committed to working within the following parameters;

- Supporting economic progress - performing enforcement duties should not impede business productivity.
- Risk assessment - undertaking a risk assessment of principle enforcement activities.
- Information and advice - providing information and advice in a way that enables businesses to clearly understand what is required by law.
- Inspections - only performing inspections following a risk assessment, so resources are focused on those least likely to comply.
- Data requirements - collaborating with other regulators to share data and minimise demand on businesses.
- Accountability - increasing the transparency by reporting on outcomes of enforcement activities.

6.3 Complaints Regarding Service Delivery

Information about the complaints procedure is available from the Corporate Planning Department of Wiltshire FRS. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Note; These complaints must not be confused with fire safety complaints or appeals against formal notices for which different procedures exist.

6.4 Fairness

Wiltshire FRS will support its core values by ensuring its CSI's work to reduce risk and to treat everyone fairly and with respect. It will also, whilst discharging the function of fire protection, ensure it makes reasonable and proportionate arrangements for those individuals or groups who have communication and comprehension challenges (e.g. where English is not the first language).

6.5 Accountability

Wiltshire FRS is accountable to the community for its actions and will ensure that it carries out its duties in accordance with the principles of proportionality, consistency, transparency and effective targeting.

6.6 Procedures

6.7 Recommendations and requirements will be put clearly and simply. All communications will be confirmed in writing if either the recipient requests it or if there is a legal requirement.

6.8 Legal requirements will be clearly identified and will always include a reasonable time scale to ensure compliance.

6.9 Legal requirements will be clearly distinguished from recommendations or advice.

6.10 The principles of the Enforcement Management Model ([EMM](#)) will be used as a benchmark in terms of the extent of any subsequent enforcement sanctions.

6.11 When the decision to take enforcement action has been made, there may be more than one way of resolving outstanding fire safety shortcomings. Before the enforcement action is taken, CSI's will provide an opportunity to discuss matters and, if possible, agree a mutually acceptable course of action. If however immediate action is required to reduce the risk to life from a potential hazard, or to prevent evidence being destroyed, this opportunity will not be available.

6.12 Where immediate action in the form of a prohibition notice is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing within 5 working days in most cases, but never more than 10 working days. The physical issuing of a written prohibition notice will be deemed to satisfy this requirement immediately.

6.13 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is instigated. Whenever possible this advice will be issued with the prohibition or enforcement notice.

7.0 Enforcement Options

7.1 The Wiltshire FRS policy on determining the level of enforcement action to take utilises nationally recognised risk assessment based methodology. In deciding what action to take to ensure legal compliance and will consider the following:

- The nature and seriousness of the alleged offence(s)
- The risk of death or serious injury to relevant persons
- Previous experience and compliance record of the responsible person
- Action taken to prevent any recurrence
- The likely effectiveness of the various enforcement options
- Any explanation offered and the circumstances and attitude of the responsible person
- Any statutory defence available

7.2 The Authority will always seek to use enforcement action that is proportionate primarily to the circumstances of the offence and the risk to life, but in so doing will also consider other factors such as the size of the business or undertaking and the nature of its activities.

Choices of enforcement approach available to Wiltshire FRS are:

- To educate and inform
- To Issue a statutory notice identifying the nature of the corrective action needed
- To restrict or prohibit use
- To refer issues to other agencies
- To impose a simple caution*
- To initiate prosecution proceedings

** a simple caution is a statement by an authorised officer or CSI, that is accepted in writing by the responsible person, that they have committed an offence for which there is a realistic prospect of conviction. A simple caution will only be used where a prosecution could be properly brought.*

7.3 Wiltshire FRS will keep its regulatory activities under review through management of its fire safety enforcement function. This will ensure, so far as reasonably practicable, that all actions are proportionate and impose the minimum burden necessary to secure compliance with the law.

7.4 Educate and inform and Notice of Deficiencies

When a non compliance with the law is found, verbal information or an informal written notification may be given. Officers may also give general advice. Where advice is not mandatory this will be made clear.

7.5 Enforcement and Alterations Notices

Regulatory notices calling for corrective action would generally be used where there is a clear breach of the law; where the degree of risk or harm from the situation is significant; and where a remedy needs to be identified and secured within a set period of time. Notices specify the problem and will either require a remedy as determined by CSI's or (if the legislation allows) may allow for other action with an equivalent remedial effect. In most cases there is a right of appeal against a notice. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing to the person on whom the notice is served.

Where a notice requires changes to premises in which another enforcing body has a statutory interest, Wiltshire FRS will, so far as is reasonably practicable, consult with such bodies as can reasonably be identified before serving the notice. Any such

consultation will not release the person on whom the notice is served from their statutory obligation to consult relevant bodies in respect of works they will undertake as a result of a notice. Any failure by the Service to consult with any particular body or person will not invalidate any notice served under the Regulatory Reform (Fire Safety) Order 2005.

7.6 Prohibition/Restriction notices

Wiltshire FRS has powers under Article 31 of the Regulatory Reform (Fire Safety) Order 2005 to prohibit the use of the whole or part of premises or to restrict the use of premises. Such action will be considered where conditions are found that constitute a serious risk to life or injury to persons in the event of fire. Where immediate action is necessary an explanation of why such action is required will be given at the time and confirmed in writing. Where there are rights of appeal these will be clearly set out in writing at the time the action is taken.

7.7 Prosecution

Prosecution will normally only be considered where one or more of the following criteria are satisfied, subject to the relevant statutory provisions;

- A person or an organisation has, by intent or recklessness, by taking action or choosing not to act, endangered life from fire.
- A person or an organisation has taken insufficient action to implement requirements made under statutory duties to protect persons from fire risks.
- The offender deliberately obstructs a CSI carrying out his or her duties.
- The offender has repeatedly ignored advice.
- Where there have been repeated breaches which give rise to a significant risk.
- Where there has been a failure to comply with an enforcement or prohibition notice, or there has been a repetition of a failure that was subject to a simple caution.
- Where false information has been supplied wilfully or there has been intent to deceive in relation to a matter which gives rise to a significant risk from fire.
- Where the Chief Fire Officer approves that a prosecution would be in the best interest of the public.

Criteria that might argue against a prosecution will include:

- The Court is likely to impose a very small penalty on conviction
- The offence appears to have been the result of a genuine misunderstanding or mistake
- The harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement
- There is a willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed
- There is a long delay between offence and trial, unless
 - i) The offence is serious
 - ii) The delay has been caused, at least in part, by the defendant
 - iii) The offence has only recently come to light
 - iv) The complexity of the investigation results in unavoidable delays.

- The defendant is elderly, in poor health or confused (unless there is a real possibility that the offence will be repeated).
- The defendant has, so far as possible, put right the harm caused
- A key witness has refused to testify or to provide a Witness Statement or, if they are the only victim, they have strongly indicated opposition to a prosecution

8.0 Public Register

Wiltshire FRS will comply with the requirements of the [Environment and Safety Information Act](#) 1988 in that it is obliged to enter details of certain notices into a register to which the public have access. This is available on the Wiltshire FRS website at:
www.wiltshire.gov.uk/technical_Fire_Safety/enforcement-notice.html

9.0 Consultations

Wiltshire FRS will meet the requirements for statutory consultations with other bodies, and will have agreed protocols on consultation procedures.

The purpose of consultation is;

- a) to ensure that the expectations of others continue to be satisfied and that regulated entities are fully involved in Wiltshire FRS risk management decisions,
- b) to involve others in the decision making process, the views of persons consulted shall be taken into account and action taken where necessary.
- c) to ensure compliance with legal obligations

9.1 Statutory consultations with other enforcing agencies will be carried out within prescribed time limits. Non-statutory consultations will be carried out in accordance with service level agreements, made between Wiltshire FRS and the agencies.

9.2 Information (where permitted by the [Data Protection Act 1998](#)) is to be provided to other enforcement bodies in accordance with the legislation and any agreed protocols. On receipt of information from such bodies, managers or CSI's will take appropriate action to provide for public safety.

10.0 Human Resources

A competent workforce sits at the heart of this strategy. When advice is offered it will be targeted and transparent using the national guidance documents as a benchmark in terms of 'standards'. Wiltshire FRS CSI's when dealing with businesses that do not possess the technical expertise to derive a range of acceptable outcomes which satisfy the standard required, will provide a level of advice that enables the business to understand what is required by the law, but will not extend into the area of consultancy.

- 10.1 Wiltshire FRS recognises the importance of training and development towards the success of fire protection activities. It is committed to continuous professional development providing competence based training to TFS managers and CSI's at appropriate career and development points.
- 10.2 CSI's completing fire protection duties will be working to professional standards and adhering to the policies and procedures laid down by the Wiltshire and Swindon FRA. Checking of standards will ensure that the service being provided to protect the community is correct, fair and consistent and takes into account the principles of the compliance code.

Professional standards and enforcement outcomes will be monitored by implementation of the Wiltshire FRS [TFS quality control policy](#).

11.0 Data Protection

The Service will comply with the principles of the Data Protection Act 1998 governing the use of personal data received or obtained and will respect the rights and freedoms of those individuals when processing their details.

- 11.1 For more details refer to Wiltshire FRS freedom of [Information Management Policy](#).

12.0 Freedom of Information

Under the Freedom of Information Act 2000, individuals are given 'a general right of access to information held by public authorities in the course of carrying out their functions subject to certain conditions and exemptions'. Under Section 19 of the Act, public authorities are required to produce a publication scheme setting out details of the information routinely published or made available, how the information is made available (in hard copy and on-line), and whether it is available free of charge or with payment.

- 12.2 For more details refer to Wiltshire FRS Information Management Policy.