

Determination Protocol

Standard Operating Procedure No. TFS - 026

Document Overview: -

This document outlines the procedures to be adopted when carrying out a determination within the scope of the Regulatory reform (Fire Safety) Order 2005.

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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

The following section contains extracts taken from Guidance Note No2 issued by Communities & local Government (CLG)

- 1.1 The Regulatory Reform (Fire Safety) Order 2005 (“the Order”) came into force on 1 October 2006. This affects all non-domestic premises in England and Wales. The Order sets out the duties of the person responsible for premises (known in the Order as the “responsible person”). Other persons in control of premises are under duties parallel to those of a responsible person. References in this guidance to a responsible person also includes such a person. The responsible person is required to carry out a suitable and sufficient fire risk assessment and then implement the necessary fire precautions and management procedures.
- 1.2. The Order is enforced by periodic inspections or audits by the enforcing authority (usually Fire and Rescue Authorities). If the enforcing authority considers that the responsible person has failed to comply with any provision of the Order they can advise on remedial measures or issue an enforcement notice specifying what measures they consider necessary.
- 1.3 Where both parties (the enforcing authority and the responsible person) agree that there is a need for improvements to fire precautions but disagree on the technical solution to be used, they may agree to refer the issue to the Secretary of State for independent determination under article 36 of the Order.

Example An occupier has begun to use a new mezzanine floor in a warehouse. Both the enforcing authority and the responsible person agree that the distance to a place of safety is excessive. The enforcing authority feels that it is necessary to provide an alternative escape route from the mezzanine floor. The responsible person believes that a smoke detection system in the whole building will reduce the time for escape to an acceptable level with the existing escape route. Both agree to approach the Secretary of State to seek a determination under article 36 of the Order.

- 1.4 Consideration of a determination under article 36 of the Order should be at the earliest suitable opportunity and wherever possible before a formal enforcement notice has been issued. If an enforcing authority considers the breach is so serious that they have served an enforcement notice, a determination may not be appropriate.
- 1.5 Either party may refuse to agree to this procedure – for instance, if an enforcing authority considers that any delay brought about by the process would put people’s safety at an unacceptable risk. In this case it is expected that enforcement action would be taken without a referral for a determination.
- 1.6 Determinations can only be made in respect of technical disagreements. The Secretary of State cannot determine the law itself.

Example Following an inspection the enforcing authority has written to the owner of a premises warning that enforcement action will be taken unless a written record of a risk assessment is produced for inspection.

The owner of the premises does not consider that the Order requires him to produce such a document and agrees with the enforcing authority to seek determination from the Secretary of State. However the Secretary of State rejects the request as it relates to a determination of the law.

- 1.7 An enforcing authority may refuse to agree to this procedure – for instance where they consider that any delay brought about by the process would put people’s safety at an unacceptable risk.

Example An enforcement notice has been served on the responsible person for a theatre. The notice requires that the exit signs indicating an escape route should be replaced by larger ones due to the viewing distances involved.

The responsible person disputes this, but the enforcing authority refuses to use the determination procedure as they consider that the small signs pose a serious and immediate danger as the occupants of the building will be unable to recognise the escape route. (The RP still has the right to appeal to a court.)

- 1.8 Once the Secretary of State has made a determination, the enforcing authority may not take enforcement action that would be in conflict with this determination. Once the decision has been issued the Secretary of State has no further jurisdiction in the case and any matters that follow should be referred back to the enforcing authority.

Example The Secretary of State has issued a determination in relation to the evacuation procedures in place in a low risk warehouse used for the storage of stone ornaments. The extended travel distances in the premises are considered acceptable as the fire risk in the premises is low due to various protective measures provided in the premises.

Following an inspection the enforcing authority finds that the premises is now being used for the storage of plastic toys stored in cardboard packaging using a high bay warehouse. The protective measures have not been revised for the increased hazard. If the enforcing authority considers that the protective measures are now inadequate they may serve an enforcement notice requiring the procedures to be improved, without reference to the previous determination.

2.0 Decision process on going to determination

- 2.1 As stated in the introduction, the decision to go to determination relies on both parties agreeing to do so.
- 2.2 The inception of the offer/request to go to determination could come from either party. Therefore both scenarios require a decision making process;
- a) Scenario A
Inception of offer/request to go to determination by Wiltshire FRS; see [Annex A](#)
 - b) Scenario B
Inception of offer/request to go to determination by client; see [Annex B](#)

- 2.3 The decision on whether to go to determination should be based on the following factors.
- a) Likelihood of our success in making the premises safe.
 - b) Are the clients genuine in their wish to go to determination, or do we suspect a degree of procrastination.
 - c) Is it in the general interest to obtain a government policy ruling on a technical aspect of fire safety.
 - d) Impact on existing workloads of Inspecting Officers.
- 2.4 The decision to go to determination lies initially with the Office Managers. However they can refer to the TFS procedures Manager for further guidance. In the event of continued indecision the final decision will rest with the Group Manager Service Delivery (Protection) who may in turn seek further legal guidance.
- 2.5 All correspondence can be signed by the inspecting officer.

3.0 How to apply for determination

An application for determination should contain **three** paper copies of the following documents:

- names and addresses of the enforcing authority and the responsible person
- full postal address of the premises in question
- statement from **both** parties requesting the Secretary of State to determine the question
- whether any formal enforcement action has been taken and, if so, full details of that action, with copies of any enforcement notice etc
- the most recent risk assessment for the premises
- statement setting out the provision of the Order at issue and the measures proposed by both parties to meet the provision
- any relevant correspondence involved
- any enforcement notice; and,
- any other documentation, supporting the case for compliance, including any calculations, plans etc.

- 3.1 The package of documents should be sent to:

Fire Safety Policy Team
Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU

- 3.2 If a request for a determination is considered valid, parties will receive a letter confirming receipt. If a request is not considered valid parties will receive a letter setting out why it has been rejected.
- 3.3 If more information is requested, this must be provided within the specified timescale or the Secretary of State may refuse to consider the case further.
- 3.4 A decision should be received within four months of all documents being submitted. A copy will be sent to both parties.

3.5 Once the decision has been issued, the Secretary of State has no further jurisdiction in the case. The Department will not enter into any correspondence with respect to a case or offer any further explanation of a decision.

4.0 Recording of Determinations.

4.1 The recording of the decisions will be maintained as part of the public register of enforcement activities. However this is for internal use and will not be publicly disclosed.

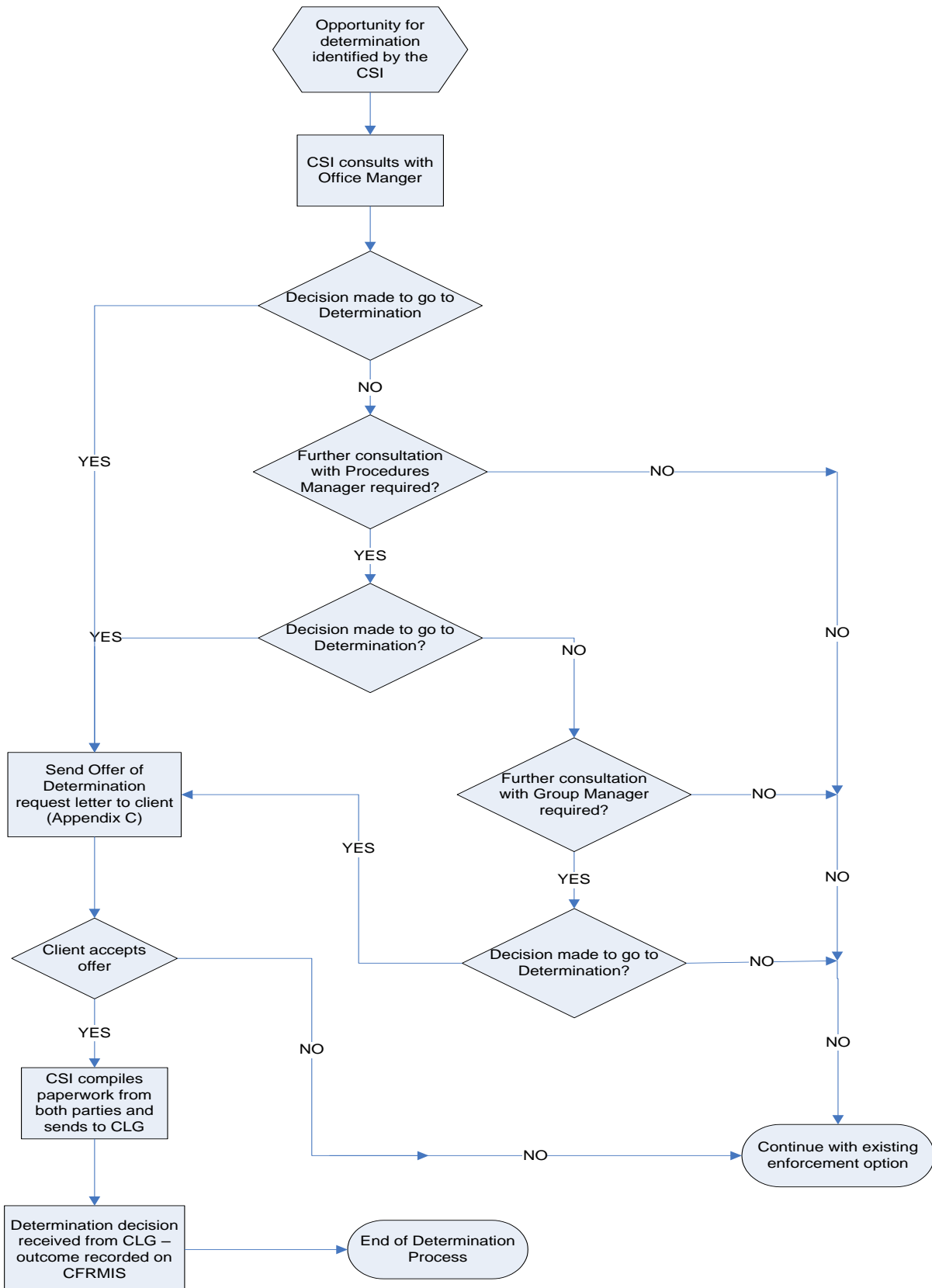
4.2 A copy of the decision will also be held on the premises file in FISH.

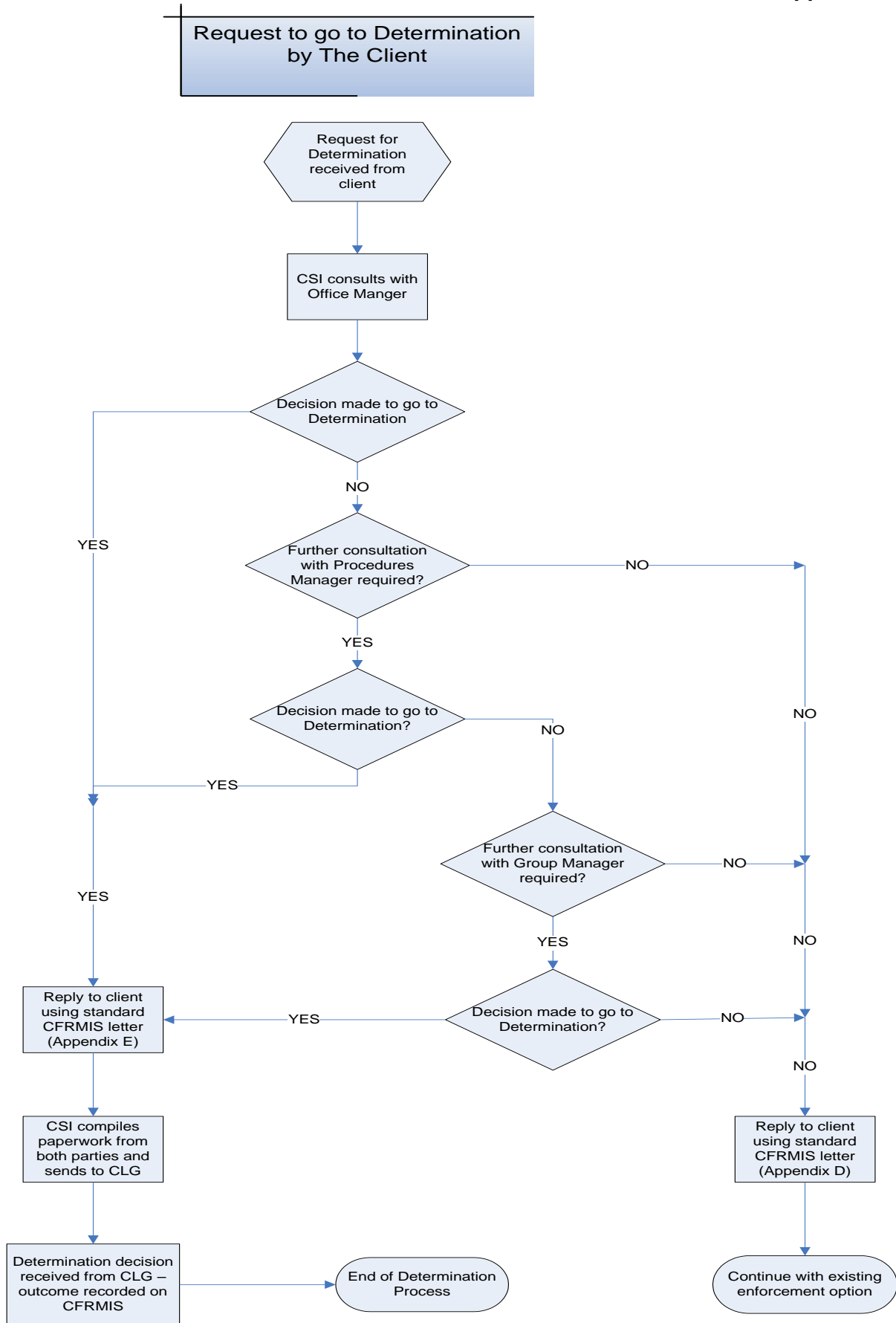
5.0 CFRMIS Administration.

4.1 For CFRMIS administration, the following Codes will be used when dealing with a determinations.

Description of Activity	Inspection Type	Job Reason	CFRMIS Action
Receipt or creation of determination request	FU/ FUEN/FUPN	DP Determination Preparation.	Determination log completed when available on CFRMIS
Request for determination is accepted	FU/ FUEN/FUPN	DP-Determination preparation DH if attendance at a hearing is required.	Determination log completed when available on CFRMIS

Request to go to Determination
By Wiltshire FRS





Your Reference

Our Reference

Contact

Date

Dear

Offer of Determination

In respect of our *Enforcement Notice No XXXXX / Notice of Deficiencies dated XXXX * delete as applicable*, we are aware that we have a technical disagreement in respect of the resolution of the below matter(s):

Specify matters

Under Article 36 of the Order, under which the notice has been served, where disagreement exists over a technical solution to a fire safety issue, if both parties are in agreement, then determination can be sought from the Communities & Local Government Department. The decision is purely voluntary on the part of both parties.

The guidance on determination is attached as an appendix to this letter to provide further information on the process and the effect it has on any existing enforcement action being undertaken. **Attach Guidance Note Number 2*

As such, Wiltshire & Swindon Fire Authority formally offer the opportunity to seek determination in the above stated matters. I request that you give this all due consideration and reply to the named officer at your earliest convenience.

Yours faithfully

On behalf of Wiltshire & Swindon Fire Authority.

Your Reference

Our Reference

Contact

Date

Dear

Received Offer of Determination; *Insert Full Address of Premises.*

Thank you for your letter dated **XX XXX XXXX** in respect of your offer for determination.

Wiltshire & Swindon Fire Authority ("The Authority") has given this matter due consideration and does not wish to seek determination at this time for the following reason(s):

Insert reasons

Consequently, the enforcement action currently being taken by The Authority regarding the aforementioned premises continues in force, and the matters specified in the relevant notice/s served by The Authority must be complied with.

If you wish for further clarification, please contact the officer named below.

Yours faithfully

On behalf of Wiltshire & Swindon Fire Authority.

Your Reference

Our Reference

Contact

Date

Dear

Received Offer of Determination.

Thank you for your letter dated **XX XXX XXXX** in respect of your offer for determination.

The Fire Authority has given this matter due consideration and agrees to seek determination in respect of (*identify the matters regarding the agreed determination*).

Accordingly, an officer will be in touch with you shortly to arrange the provision of documentation to be sent to Communities and Local Government Department.

Yours faithfully

On behalf of Wiltshire & Swindon Fire Authority.