
STATUTORY INSTRUMENTS

2005 No. 1541

The Regulatory Reform (Fire Safety) Order 2005

PART 4

OFFENCES AND APPEALS

Offences

32.—(1) It is an offence for any responsible person or any other person mentioned in article 5(3) to—

- (a) fail to comply with any requirement or prohibition imposed by articles 8 to [F¹22B] and 38 (fire safety duties) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- (b) fail to comply with any requirement or prohibition imposed by regulations made, or having effect as if made, under article 24 where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- (c) fail to comply with any requirement imposed by article 29(3) or (4) (alterations notices);
- (d) fail to comply with any requirement imposed by an enforcement notice;
- (e) fail, without reasonable excuse, in relation to apparatus to which article 37 applies (luminous tube signs)—
 - (i) to ensure that such apparatus which is installed in premises complies with article 37 (3) and (4);
 - (ii) to give a notice required by article 37(6) or (8), unless he establishes that some other person duly gave the notice in question;
 - (iii) to comply with a notice served under article 37(9).

(2) It is an offence for any person to—

- (a) fail to comply with article 23 (general duties of employees at work) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- (b) make in any register, book, notice or other document required to be kept, served or given by or under, this Order, an entry which he knows to be false in a material particular;
- (c) give any information which he knows to be false in a material particular or recklessly give any information which is so false, in purported compliance with any obligation to give information to which he is subject under or by virtue of this Order, or in response to any inquiry made by virtue of article 27(1)(b);
- (d) obstruct, intentionally, an inspector in the exercise or performance of his powers or duties under this Order;
- (e) fail, without reasonable excuse, to comply with any requirements imposed by an inspector under article 27(1)(c) or (d);
- (f) pretend, with intent to deceive, to be an inspector;

Status: Point in time view as at 01/10/2023.

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- (g) fail to comply with the prohibition imposed by article 40 (duty not to charge employees);
- (h) fail to comply with any prohibition or restriction imposed by a prohibition notice.
- (3) Any person guilty of an offence under paragraph (1)(a) to (d) and (2)(h) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.
- (4) Any person guilty of an offence under paragraph (1)(e)(i) to (iii) is liable on summary conviction to a fine ^{F2}....
- (5) Any person guilty of an offence under paragraph (2)(a) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.
- (6) Any person guilty of an offence under paragraph (2)(b), (c), (d) or (g) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) Any person guilty of an offence under paragraph (2)(e) or (f) is liable on summary conviction to a fine ^{F3}....
- (8) Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of that offence, and is liable to be proceeded against and punished accordingly.
- (9) Where the affairs of a body corporate are managed by its members, paragraph (8) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (10) Where the commission by any person of an offence under this Order, is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.
- (11) Nothing in this Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of—
- (a) an employee of his; or
- (b) a person nominated under articles 13(3)(b) or 15(1)(b) or appointed under 18(1).

Textual Amendments

- F1** Word in art. 32(1)(a) substituted (1.10.2023) by Building Safety Act 2022 (c. 30), ss. 156(10)(a), 170(4)(b)(c); S.I. 2023/362, reg. 4; S.I. 2023/914, reg. 3
- F2** Words in art. 32(4) omitted (1.10.2023) by virtue of Building Safety Act 2022 (c. 30), ss. 156(10)(b), 170(4)(b)(c); S.I. 2023/362, reg. 4 (with reg. 5(2)); S.I. 2023/914, reg. 3 (with reg. 6)
- F3** Words in art. 32(7) omitted (1.10.2023) by virtue of Building Safety Act 2022 (c. 30), ss. 156(10)(c), 170(4)(b)(c); S.I. 2023/362, reg. 4 (with reg. 5(2)); S.I. 2023/914, reg. 3 (with reg. 6)

Defence

33. Subject to article 32(11), in any proceedings for an offence under this Order, except for a failure to comply with articles 8(1)(a) or 12, it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

Onus of proving limits of what is practicable or reasonably practicable

34. In any proceedings for an offence under this Order consisting of a failure to comply with a duty or requirement so far as is practicable or so far as is reasonably practicable, it is for the accused to prove that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

Appeals

35.—(1) A person on whom an alterations notice, an enforcement notice, a prohibition notice or a notice given by the fire and rescue authority under article 37 (fire-fighters' switches for luminous tube signs) is served may, within 21 days from the day on which the notice is served, appeal to the court.

(2) On an appeal under this article the court may either cancel or affirm the notice, and if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(3) Where an appeal is brought against an alterations notice or an enforcement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

(4) Where an appeal is brought against a prohibition notice, the bringing of the appeal does not have the effect of suspending the operation of the notice, unless, on the application of the appellant, the court so directs (and then only from the giving of the direction).

(5) In this article “the court” means a magistrates' court.

(6) The procedure for an appeal under paragraph (1) is by way of complaint for an order, and—

(a) the Magistrates' Courts Act 1980 ^{M1} applies to the proceedings; and

(b) the making of the complaint is deemed to be the bringing of the appeal.

(7) A person aggrieved by an order made by a magistrates' court on determining a complaint under this Order may appeal to the Crown Court; and for the avoidance of doubt, an enforcing authority may be a person aggrieved for the purposes of this paragraph.

Marginal Citations

M1 1980 c. 43.

Determination of disputes by Secretary of State

36.—(1) This article applies where—

(a) a responsible person or any other person mentioned in article 5(3) has failed to comply with any provision of this Order or of any regulations made under it; and

(b) the enforcing authority and that person cannot agree on the measures which are necessary to remedy the failure.

(2) Where this article applies, the enforcing authority and the person referred to in paragraph (1) (a) may agree to refer the question as to what measures are necessary to remedy the failure referred to in paragraph (1)(a) to the Secretary of State for his determination.

(3) The Secretary of State may, by notice in writing to both parties, require the provision of such further information, including plans, specified in the notice, within the period so specified, as the Secretary of State may require for the purpose of making a determination.

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(4) If the information required under paragraph (3) is not provided within the period specified, the Secretary of State may refuse to proceed with the determination.

(5) Where the Secretary of State has made a determination under this article, the enforcing authority may not, subject to paragraph (6), take any enforcement action the effect of which would be to conflict with his determination; and in this article, “enforcement action” means the service of an enforcement notice or the inclusion of any directions in an enforcement notice.

(6) Paragraph (5) does not apply where, since the date of the determination by the Secretary of State, there has been a change to the premises or the use to which they are put such that the risk to relevant persons has significantly changed.

Status:

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