House of Commons

Regulatory Reform Committee

Proposal for the Regulatory Reform (Fire Safety) Order 2004

Eleventh Report of Session 2003–04

Report, together with formal minutes, written and oral evidence

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The Regulatory Reform Committee

The Regulatory Reform Committee is appointed to consider and report to the House of Commons on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any "subordinate provisions order" made under the same Act.

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The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 141, available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm.

A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Stuart Deacon (Committee Specialist), Brian Dye (Committee Assistant) and Liz Booth (Secretary).

Contacts

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Committee Office, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is regrefcom@parliament.uk.

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Summary

The proposal for the Regulatory Reform (Fire Safety) Order 2004 is intended to achieve a wide-ranging consolidation of the existing legislation relating to fire safety, thereby reducing the burdens on business caused by the overlap of existing multiple fire safety regimes and the overlap of enforcing authorities. The aim of the proposed order is to introduce a single regulatory regime for fire safety, based on the principles of risk assessment, with one authority in each area responsible for enforcement of general fire safety issues.

The Committee considers that this large and complex proposal is an appropriate use of the regulatory reform order procedure and meets its requirements. It has identified a number of issues which it considers the Government should address before laying a draft Order before the House for approval.

The provision to be made by the Order is to be implemented in Scotland by means of an Executive Bill in the Scottish Parliament. The Committee notes that the Bill cannot achieve an identical reform of the law in Scotland because certain fire safety matters are reserved under the Scotland Act. It considers that the regimes in England and Wales and Scotland should be brought into line as soon as possible, and suggests legislative strategies for this (paragraph 38).

In order to maintain the present level of necessary protection, the Committee considers that the Secretary of State must provide guidance to those responsible for fire safety under the Order ("responsible persons") and to enforcing authorities as to what the words "where necessary" mean in articles 13 and 14 of the draft Order (paragraph 77).

The Committee considers that the draft Order should be amended to provide that firefighters receive the protection of the Order's provisions when they are on premises carrying out fire authority duties other than firefighting (paragraph 82).

The Committee recommends amendment of the draft Order to give a clearer definition of what constitutes a place of safety (paragraph 88).

The Committee is concerned that the arrangements for enforcement of the proposed regime may in practice prove insufficiently rigorous. It recommends amendment of the draft Order to place a duty on the Secretary of State to issue guidance to fire authorities on their enforcement of the Order's provisions and to monitor the enforcement activity of fire authorities, and to allow the Secretary of State to direct fire authorities in their enforcement activity (paragraph 104).

The Committee considers that the case for revocation of the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, which implemented the recommendations of the Fennell Report into the King's Cross fire disaster, has not yet been made, and is concerned that the revocation of the Regulations may remove necessary protections. It recommends that the provisions of the present Regulations be retained in legislation (paragraph 127).

The Committee considers that the application of the proposal to fire protection systems in houses in multiple occupation (HMOs) should be clarified (paragraph 163).

The Committee notes that the regulatory impact assessment prepared in respect of the proposal may have overstated its quantifiable economic benefits by omitting initial set-up costs (paragraph 219).

The Committee considers that the power to amend the principal provisions of the Order by subordinate provisions order should be made subject to the affirmative procedure (paragraph 226).

The Committee considers that the Secretary of State should be placed under a statutory duty to issue guidance on the implementation and interpretation of the Order (paragraph 240).

1 Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the proposal for the Regulatory Reform (Fire Safety) Order 2004 in accordance with Standing Order No. 141. We have concluded that the proposal should be amended before a draft order is laid before the House.

2 Introduction

2. On 10 May 2004 the Government laid before Parliament a proposal for the Regulatory Reform (Fire Safety) Order 2004 in the form of a draft of an Order and an explanatory memorandum from the Office of the Deputy Prime Minister (the Department).[1]

3. The proposal is intended to achieve a wide-ranging consolidation of the existing legislation relating to fire safety, thereby reducing the burdens on business caused by the overlap of existing multiple fire safety regimes and the overlap of enforcing authorities. The aim of the proposed order is to achieve a single regulatory regime for fire safety, with one authority in each area responsible for enforcement of general fire safety issues.

4. The House has instructed us to examine the overall proposal against the criteria specified in Standing Order No. 141(6) and then, in the light of that examination, to report whether the Government should proceed, whether amendments should be made, or whether the order should not be made.[2]

5. Our discussion of matters arising from our examination is set out below. Where a criterion specified in Standing Order No. 141(6) is not discussed in the report, this indicates that we have no concerns to raise about that criterion.

6. We have received a number of written representations on the proposal.[3] We determined to take oral evidence from the Fire Brigades Union (FBU), the Chief Fire Officers' Association (CFOA), Professor Rosemarie Everton, Professor of Fire Law at the University of Central Lancashire, Mr Tony Taig, a risk consultant, and Phil Hope MP, Parliamentary Under-Secretary of State at the Department.[4] We are grateful to all those who have assisted us with our scrutiny of the proposal.

1 Copies of the proposal are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office website: www.cabinet-office.gov.uk/regulation/rra/rro/proposals.asp

2 Standing Order No. 141(2)

3 A list of the written evidence received is at p 59.

4 The witnesses are listed at p 60.

3 Background

7. The proposal for the Regulatory Reform (Fire Safety) Order 2004 stems from successive Government reviews of existing fire safety legislation. As long ago as 1993 a Home Office working group concluded that the Fire Precautions Act 1971—then the principal legislative basis for the fire safety regime—"did not provide the most suitable legislative means of ensuring fire safety in the 1990s and beyond."[5]

8. An interdepartmental Review of Fire Safety Legislation and Enforcement in June 1994 examined all fire safety arrangements across Government, and in general recommended a modernisation and rationalisation of the legislative and organisational framework. The Review recommended that general fire safety in the workplace (then covered by the Fire Precautions Act 1971) should fall under the same legislative regime as process fire safety (governing fire risks arising from manufacturing processes), i.e. under the Health and Safety at Work etc. Act 1974. The Home Office, which was then responsible for fire safety, rejected this recommendation, and the Department still considers that a separate legislative vehicle for general fire safety is more appropriate.[6]

9. The present proposals for reform of fire safety legislation stem from a Home Office consultation paper, *Fire Safety Legislation for the Future*, issued in 1997, which envisaged a "radical overhaul" of the existing legislation, providing for a "new, modern approach based on risk assessment".[7] The Department has set out the subsequent developments which it considers have prepared the ground for the present legislative reform:

— *December 1997*: the Fire Precautions (Workplace) Regulations come into force (following a European directive). They were amended in 1999 to apply to a broader range of premises than the 1971 Act. They establish some of the principles of risk assessment proposed in the present Order.

— *August 2000*: a Fire Safety Advisory Board is established, providing a "strategic forum for fire safety". A Sub-Group of the Board (including industry and trade representatives) is established to examine the 1997 consultation paper and to make detailed recommendations for change.[8] The Sub-Group considers the proposals prepared by officials, amends them and submits them for Ministerial approval.

— *July 2002:* a consultation paper on the proposed Order is issued by the Office of the Deputy Prime Minister.

— *May 2004:* the proposal for the Regulatory Reform (Fire Safety) Order 2004 is laid before Parliament.

5 Explanatory statement, para 9

6 Explanatory statement, para 10

7 Explanatory statement, para 11

8 The membership of the Board and the Sub-Group are set out in the explanatory statement, paras 22–23

4 Purpose of the proposal

10. The proposal would provide a single legislative basis for general fire safety precautions in all non-domestic premises (subject to certain well-defined exceptions). It would replace the two principal pieces of legislation governing fire safety in England and Wales.

The present situation

11. The **Fire Precautions Act 1971**[9] presently applies to designated premises, of which there are two types: hotels and boarding houses, and factories, offices, shops and railway premises. Subject to certain exemptions, the occupier of such premises must apply for a fire certificate from the fire authority (in practice the local fire brigade). A certificate will only be issued after the fire authority has inspected the premises and ensured that the means of fighting fire, the means of raising the alarm and the means of escape from fire are adequate.[10]

12. The **Fire Precautions (Workplace) Regulations 1997**,[11] as amended, implement two European Community directives on workplace health and safety, the Council Framework Directive[12] and the Council Workplace Directive.[13] They apply to the vast majority of places where persons are required to work, with certain exceptions for premises which are covered by existing health and safety legislation. The legislation requires employers to carry out fire risk assessments, identify the significant findings of the risk assessment, provide appropriate fire precautions and provide information, instruction and training to employees about fire precautions.[14] Employers are required to take care of other persons on the premises, and must take account of any duty of care their employees my have to other occupants of the building.

The proposed reform

13. The Government proposes a single legislative regime to deal with general fire safety in most places used or operated by employers, the self-employed and the voluntary sector for what the Department describes as '"commercial-type" activity'.[15] Some premises and places require particular fire safety considerations, and these are removed from the scope of the draft Order.

14. Process fire safety—the particular fire safety measures required in respect of industrial processes—will continue to be dealt with under existing health and safety legislation. The draft Order draws a clear demarcation between the authorities responsible for enforcing general fire safety and process fire safety.

9 1971 c. 40

10 Explanatory statement, para 18

11 S.I. 1997/1840

12 Council Directive 89/391/EEC, a framework directive on the introduction of measures to encourage improvements in the health and safety of workers at work.

13 Council Directive 89/654/EEC, a directive concerning the minimum safety and health requirements in the workplace.

14 Explanatory statement, para 19

15 Explanatory statement, para 43

15. The Department has outlined the proposed legislative regime at paragraphs 43 to 61 of the explanatory statement. In particular the explanatory statement summarises:—

— who is responsible for fire safety precautions on premises (paragraphs 45 to 46);

— what the general requirements to be imposed are (paragraphs 47 to 50);

— which bodies are to enforce the provisions of the draft Order (paragraph 51);

— the means of enforcement (paragraphs 52 to 55);

— the offences which are to be created (paragraphs 56 to 57);

— the correlation between the draft Order and other legislative regimes (paragraphs 58 to 60), and

— how the draft Order would apply to the Crown and to the Houses of Parliament (paragraph 61).

The legislative approach

16. The draft Order sets out a "goal-based" fire safety regime which is founded upon principles of risk assessment. The Department states that under the Order the responsibility for the safety from fire of **relevant persons** on all premises rests with a defined **responsible person**.[16]

17. The "responsible person" is defined (in article 3 of the draft Order) as either:

— the employer (in relation to a workplace which is to any extent under his control); or

— the person who has control of premises in the carrying on of any trade, business or other undertaking (for profit or not); or

— the owner of premises (in any other case).

In addition, the draft Order imposes similar obligations on every person other than the responsible person who has to any extent control of premises, so far as the requirements relate to matters within his control. The Department explains that this would include any person with a contractual obligation in relation to the maintenance or safety of premises (for example, a company which is responsible for maintaining a fire alarm on the premises).[17]

18. Article 5(5) of the draft Order places the responsible person under a duty to take, or to observe, general fire precautions (as set out in articles 8 to 22 of the draft Order and in any regulations which may be made under article 24) in respect of **relevant persons**. A relevant person is defined in article 2 of the draft Order as:—

— any person (including the responsible person) who is or who may be lawfully on the premises, and

16 Explanatory statement, para 6

17 Explanatory statement, para 335

— any person in the immediate vicinity of the premises who is at risk from a fire on the premises.

The definition of "relevant person" specifically excludes any firefighter who is carrying out duties in relation to the function of a fire authority. The breadth of this definition is addressed at paragraph 79 below.

19. **Premises** are given a broad definition in the draft Order as "any place, including any workplace; any vehicle, vessel, aircraft or hovercraft; any installation on land (including the foreshore and other land intermittently covered by water) and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and any tent or movable structure." This is far broader than the definition in the 1971 Act, where "premises" means "building or part of a building."[18] The definition of "premises" in the draft Order extends far beyond what might be considered a building: for example, a golf course or a football pitch would fall within the definition of "premises".

20. Article 6(1) of the draft Order disapplies its provisions from certain premises, including domestic premises, offshore installations (e.g. oil rigs), ships, aircraft, locomotives, licensed vehicles, mines and boreholes. "Domestic premises" are defined as "premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling)." We address the definition of "domestic premises" in relation to houses in multiple occupation (HMOs) at paragraph 158 below. Article 6(2) of the draft Order provides that it shall apply to all other premises.

21. The basis for the fire precautions which must be taken under the draft Order is the **risk assessment**. Article 9(1) of the draft Order requires the responsible person to make "a suitable and sufficient assessment of the risks to which relevant persons are exposed". This risk assessment is intended to enable the responsible person to identify what general fire precautions he needs to take in order to comply with the specific requirements, or prohibitions, which the draft Order imposes on him by virtue of articles 8 to 22. We deal further with the specific issue of risk assessment, and guidance on how it is to be carried out, at paragraph 232 below.

22. The proposed Order would repeal, revoke or amend a total of 79 items of primary and subordinate legislation. The titles of the Acts affected, and the place where each is described in the explanatory statement, are set out in full in Annex 1. The titles of the statutory instruments affected, and the place where each is described in the explanatory statement, are set out in full in Annex 2. Annex 3 sets out the provisions of each enactment affected which are not presently in force.

18 Fire Precautions Act 1971, s. 43

Use of the Regulatory Reform Act

23. The proposal is one which has been long heralded by the Government as an example of the innovative use of the powers available under the Regulatory Reform Act. It is far from being a purely deregulatory measure. Its principal object is twofold:

a) to remove the anomalies and inconsistencies in existing primary and secondary legislation relating to fire safety, and

b) to replace them with a single legislative regime tailored to what the Government considers is a modern approach to fire safety precautions.

24. The proposal would repeal the substantive fire safety provisions in existing public general legislation, and disapply those provisions in health and safety legislation which presently have an application to fire safety. Fire safety provisions in local acts (making fire safety arrangements in certain local authority areas) would be similarly repealed or disapplied.

25. The proposal would then introduce a single legislative regime which would govern general fire safety precautions in the majority of non-domestic premises. The Department argues that this would provide greater certainty and clarity in legislation, and would remove the confusion of overlapping enforcement regimes. A single authority in each local government area (usually the fire authority) would be the inspecting and enforcing authority for fire safety.

Avoidance of legislative overlap

26. The Department states that the draft Order should be "the principal legislation for general fire safety."[19] It considers that "conditions of licences and permissioning regimes that cover the same general fire safety requirements as the draft Order should be disapplied." The Department has not given any examples of the type of licence or permissioning regime which should be disapplied. Nevertheless, article 43 of the draft Order provides for the suspension of terms and conditions of licences dealing with the same matters as the draft Order.

27. Article 43 provides that in cases where the licensing authority for a premises is not also the fire safety enforcing authority, any terms, conditions or restrictions imposed by the licensing authority have no effect insofar as they relate to any matter which could be dealt with under the draft Order. Similarly, article 44 of the draft Order disapplies any byelaw in relation to premises insofar as the draft Order has effect.

28. The Department states that "for the protection of the individual and to avoid inconsistent enforcement and requirements, all public bodies with a legislative interest in any place[20] should be required to consult the authority enforcing the draft Order before taking any action which may affect the fire safety arrangements."[21] Similarly, "the authority

19 Explanatory statement, para 58

20 By "place" it is assumed that the Department means premises which fall within the purview of the draft Order.

21 Explanatory statement, para 60

enforcing the draft Order should be required to consult those other authorities before taking formal enforcement action . . .". Articles 45 and 46 of the draft Order appear to make provision for consultation in accordance with this aim.

29. Article 45 of the draft Order requires a local authority which receives plans for the erection or alteration of a premises to which the order applies (in accordance with building regulations), or for the change of use of a premises to which the order would apply, to consult the fire safety enforcing authority before passing the plans. This requirement does not apply where the local authority is also the fire safety enforcing authority.

30. Article 46 of the draft Order requires any Government department or other public authority, including a building inspector, which intends to take any action in respect of premises which would change any fire safety measures taken under the draft Order to consult the fire safety enforcing authority before the action is taken.

Houses in multiple occupation

31. Domestic premises, defined as "premises occupied as a private dwelling"[22] are excluded from the scope of the proposed order. Housing law, rather than fire safety law, applies to houses in multiple occupation (HMOs) insofar as they are domestic premises. However, the Department states that fire safety law applies to the common parts of HMOs "insofar as they may have common parts or may be used as a place of work."[23] While the Department's intentions may be clear from the explanatory statement, there is a doubt as to whether the draft Order achieves this effect. The matter is addressed at paragraph 158 below.

5 Extent of the proposal's application

Application to Scotland

32. The Department states that the proposal extends to England and Wales only.[24] The principal pieces of legislation to be repealed—the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, as amended—extend to England and Wales and to Scotland. Since fire safety legislation is within the legislative competence of the Scottish Parliament, the Department proposes to leave parallel changes in Scotland to the Scottish Executive. It has stated that the Executive's intention is to have a fire safety regime which is as far as possible consistent with the arrangements proposed for England and Wales.[25]

33. As there is no regulatory reform procedure in Scotland, any similar legislative reform would have to be achieved by an Act of the Scottish Parliament. Following a three-month consultation period, the Scottish Executive introduced the Fire (Scotland) Bill into the

22 The definition includes "any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of ore than one such dwelling": Article 2 of the draft Order.

23 Explanatory statement, para 59

24 Explanatory statement, para 14

25 Appendix D, Q 18

Scottish Parliament on 28 June 2004.[26] The Executive expects Parliamentary stages of the Bill to have been completed by the spring of 2005.

34. We note that certain aspects of the proposal before us relate to matters outside the legislative competence of the Scottish Parliament. The Department has confirmed that certain aspects of fire safety which are the subject of Part 1 of the Health and Safety at Work etc. Act 1974,[27] and matters affecting the armed forces of the Crown and visiting forces,[28] are reserved to the UK Parliament. In addition, it concedes that the Scottish Parliament may not be able to confer enforcement functions on the fire service maintained by the Secretary of State for Defence in relation to defence premises in Scotland, or on the Health and Safety Executive.

35. The specific legislative provisions relating to fire safety which are reserved matters and cannot be amended by Act of the Scottish Parliament are set out in reservation H2 of Schedule 5 to the Scotland Act 1998, as follows:

— fire precautions in relation to petroleum and petroleum spirit;

— fire safety on construction sites, [29] and

— fire safety on any other premises which, on 1 July 1999, were of a description specified in Part I of Schedule 1 to the Fire Certificates (Special Premises) Regulations 1976. Such premises include nuclear installations, premises where highly flammable liquid or gases are held under pressure and premises where artificial fertilizers are manufactured: they will remain subject to a process of fire certification administered by the Health and Safety Executive.

In addition paragraph 9 of Schedule 5 to the Act reserves matters dealing with all Crown forces, visiting forces and international headquarters and defence organisations.[30]

36. The Department states that the options for reform of fire safety law in Scotland are being explored by the Scottish Executive and a number of UK Government departments, with the primary objective of consistency of all legislative fire safety provisions in Scotland.[31] The UK departments concerned in addition to the Office of the Deputy Prime Minister are the Scotland Office, the Office of the Solicitor to the Advocate General, the Health and Safety Executive and the Department for Constitutional Affairs. It appears that the Ministry of Defence is not involved in this exercise, despite the defence-related issues involved.

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26 SP Bill 24

27 Appendix D, Q 19, citing reservation H2 in Schedule 5 to the Scotland Act 1998. These reserved matters fall outside the scope of the Fire Precautions (Workplace) Regulations 1997 and are covered by provisions defined in section 53 of the Health and Safety at Work etc. Act 1974. Reservation H2 of the Schedule was amended and clarified by article 6 of the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 (S.I. 1999/1749).

28 Paragraph 9 of Schedule 5 to the Scotland Act 1998

29 Fire safety on ships and hovercraft, in mines and on offshore installations is also a reserved matter, but is outside the scope of the proposed Order, being excluded by sections 6(1)(c), 6(1)(f) and 6(1)(b) respectively.

30 Article 50 of the draft Order provides that the Order will apply to visiting forces or international headquarters of defence organisations in England and Wales to the same extent as it applies to the Crown: its application to the Crown is defined in article 49.

31 Appendix D, Q 20

37. We consider it important that the provisions of the proposed fire safety legislative regime applies consistently throughout England and Wales and Scotland. If the legislative regimes north and south of the Border do not coincide, an additional burden will be placed on businesses operating in England and Wales and Scotland in complying with two separate regimes. **We recommend that, should the proposed regulatory reform order and the Scottish Parliament Bill both pass, the Department should ensure that their provisions come into effect simultaneously**.

38. In addition, we consider that those areas of fire safety legislation in Scotland which are beyond the reach of the proposed regulatory reform order and the Scottish Parliament should be brought into conformity with the proposed legislative regime as soon as possible. At least two options are open to the Government in this respect:

a) the passage of an Order in Council under section 30 of the Scotland Act 1998 to modify the reservations in Schedule 5 to that Act relating to fire safety, thereby bringing the relevant areas of fire safety legislation in Scotland within the legislative competence of the Parliament; or

b) the introduction of a further regulatory reform order making specific provision for the amendment of the reserved elements of fire safety law as it applies in Scotland.

We consider that the Government should bear these options in mind when planning its strategy for dealing with future regulatory reform orders which may deal with reserved matters.

Application to Northern Ireland

39. The present legislation relating to fire safety does not apply in Northern Ireland, where a separate regime is in force. The Department states that any reform of fire safety legislation in Northern Ireland would be considered separately.[32]

6 Assessment against Standing Order No. 141 (6) criteria

a. Appropriateness

40. The House requires us to consider whether the proposed reform is appropriate to be made by delegated legislation.

41. We have thus far reported on 21 proposals laid before Parliament under the Regulatory Reform Act and have considered each of them to be appropriate for delegated legislation. The scope of the present proposal is far broader than anything previously contemplated under the Regulatory Reform Act, not only in the number of separate repeals of, and amendments to, existing legislation, but also in the extent and nature of the reform proposed. The proposal also arguably makes a novel use of the Regulatory Reform Act powers. We have therefore given careful consideration to the issue of appropriateness.

32 Explanatory statement, para 14

Purpose

42. The Regulatory Reform Act provides for the making of orders to remove or reduce burdens, to introduce new burdens or to re-enact existing ones so long as they meet the statutory tests of fair balance, desirability and proportionality, and to remove inconsistencies and anomalies in existing legislation.

43. Many previous regulatory reform proposals have had a purpose which was essentially deregulatory. The main object of the proposal has been to remove a burden, and any burdens re-enacted, or new burdens created, have been consequential upon the removal of the burden, and have been made to ensure, for instance, that necessary protections are retained.

44. The present proposal has an avowedly different purpose, that of reforming an entire regulatory regime. The principal object of the proposal is not the removal of burdens, but the re-balancing of legislative burdens in a way the Government considers proportionate and desirable. It is the clearest demonstration so far of the breadth of the power available to the Government under the Regulatory Reform Act compared to the powers available under the Deregulation and Contracting Out Act 1994.

45. The Government has often cited the example of fire safety legislation as a regulatory regime which would be suitable for wide-ranging reform by delegated legislation. During the debates on the Regulatory Reform Bill [*Lords*] in 2000 and 2001, the Government indicated that it was likely to use the powers in the Regulatory Reform Act to bring in a proposal to reform the law on fire safety.

46. The point was raised in the Commons Third Reading debate on the Bill, in the context of the Government's commitment not to use the regulatory reform procedure to introduce measures which were both large *and* controversial: "Fire safety legislation is large by anybody's measure—it remains to be seen whether it is controversial."[33]

47. There has been no hard and fast definition of what is likely to constitute a "large and controversial measure" which would be inappropriate for delegated legislation. Lord Falconer, when giving evidence on the Bill to the Lords Committee, talked of an "elephant test": "you cannot describe it, but you know it when you see it."[34] He argued that the statutory processes provided for under the Act, such as the process of consultation and the statutory tests, would winnow out any inappropriate proposals.

Size

48. The proposed Order is far larger than any proposal we have thus far considered, not only in terms of its length (51 articles and 4 schedules) but also in its scope (the effective repeal and reform of the entire legislative regime relating to fire safety) and its extent (the repeal or amendment of 21 general and 33 local Acts and the revocation or amendment of 25 pieces of secondary legislation.)

33 Mr Andrew Lansley MP, then Opposition spokesman on the Cabinet Office: HC Deb, 5 April 2001, col 589

34 Fifteenth Report from the House of Lords Committee on Delegated Powers and Deregulation, Session 1999–2000, *Draft Regulatory Reform Bill*, HL Paper (1999–2000) 61, Q 13

Controversy

49. The Minister for the Cabinet Office has said in the House that "highly charged or politically controversial measures are—and will remain—better suited to the floor of the House. The consultation process will be key to establishing whether a proposal is suitable to enactment as an RRO or whether it would be best dealt with as a Bill."[35]

50. The Department has given a summary of the consultation process and the changes made to the proposal as a result of consultation. It has stated that the Government considers that "the broad thrust of the proposals consulted on are reasonable, appropriate and proportionate."[36]

The Committee's position

51. We reserve the right to examine each proposal for a regulatory reform order on its merits. In this we follow the principles set out by our near predecessor, the Deregulation and Regulatory Reform Committee (DRRC), in its report on the handling of regulatory reform orders.[37] That Committee stated that the regulatory reform procedure should not be used to implement substantial policy changes which require the higher level of attention which Parliament pays to primary legislation, and undertook to prevent what might be considered "primary legislation by stealth". But it also stated that the Committee had no intention "of subverting the intentions of Parliament in drafting the Regulatory Reform Act by unduly restricting the scope of that Act."[38]

52. The DRRC nevertheless noted the Explanatory Notes to the Regulatory Reform Act, which set out the rationale for considering regulatory reform orders via the super-affirmative procedure:

> "The super-affirmative order-making procedure, with its thorough consultation and weighing of evidence, is well suited to the objective consideration of complex issues. It is ideal where the judgment of experts is required; for issues on which a group of reasonable people, given the relevant facts, would be likely to reach consensus without compromise ..."[39]

53. The DRRC considered that the key question to be asked concerning appropriateness was "are we in the Committee competent to come to the necessary judgments in respect of this proposal on behalf of the House; or are these matters the detail of which it must be for the whole House to debate and, if necessary, vote upon?"[40]

54. Having taken oral evidence on the proposal, we are satisfied that it does not raise matters of controversy which would be more appropriately debated on the floor of the House and in Standing Committee. Nor does it advance a legislative change which would

35 Mr Graham Stringer MP, then Minister for the Cabinet Office, HC Deb, 2 May 2001, col. 873

36 Explanatory statement, para 33

37 First Special Report, Session 2001–02

38 HC (2001–02) 389, para 16

39 Explanatory Notes to the Regulatory Reform Act 2001, para 47

40 HC (2001–02) 389, para 16

be more appropriately dealt with by primary legislation. We consider that the scrutiny which we have been able to give to the proposal on behalf of the House has been appropriately thorough.

55. This is not to say that the proposal would not make significant reforms to existing primary and secondary legislation. These proposals deserve to be examined closely, and we expect the Government to pay due regard to the recommendations which we make as a result of our examination.

56. The House has set out, in its Standing Orders, the occasions when it considers it appropriate for the whole House to consider draft regulatory reform orders in debate.[41] In all other respects it has delegated the consideration of such draft orders and proposals for orders to this Committee. **We consider that the subject matter and content of the proposed Order are appropriate for delegated legislation and fall within our remit.**

57. We have made recommendations for the amendment of the proposal and we await consideration of any draft Order which the Government may bring forward. We nevertheless believe that Members should give the proposal careful consideration in the context of the Government's overall programme for the reform of the fire service. **We consider that the subject matter of our Report is relevant to the overall issue of fire service reform, including the reforms to be made via the Fire and Rescue Services Bill and the introduction of integrated risk management planning, and we consider that the Government should find time for an adjournment debate on fire service reform which will treat the issue of fire safety in this context.**

b. Removal of burdens

58. The principal means whereby the draft Order would reduce or remove burdens is by the repeal of existing requirements on occupiers of premises and the Fire Service.

59. The proposal would repeal or amend 21 existing general Acts extending to fire safety, and a further 33 local Acts, and would revoke or amend a further 25 pieces of subordinate legislation. In each case the repeal of the particular provisions of the enactment relating to fire safety is to be accompanied by the imposition of new burdens contained in the proposed order.

60. The Department has set out, in relation to each enactment, the burdens which are to be removed and the necessary protections which are to be retained. In general the Department has adequately identified the burdens in existing legislation which the draft Order would remove. Many of the burdens in existing legislation are to be wholly or partially repealed and replaced by new burdens in the draft Order. Other legislative provisions (particularly those contained in local Acts relating to particular local authorities) are to be repealed or disapplied because they overlap with the overall and general duties relating to fire safety which are included in the draft Order.

61. It is not intended to spell out here the specific burdens which are to be reduced or removed by means of the draft Order. The following paragraphs deal with possible

41 S.O. No. 18

inconsistencies and anomalies in the explanation of how necessary protections are to be maintained.

c. Necessary protection

62. All the legislation repealed, revoked or amended by the draft Order relates to general fire safety protection. The Department considers that the protections contained in the legislation affected will be adequately maintained by the new draft Order.

63. We identified certain areas where necessary protection in existing legislation might not be adequately maintained, and raised the issues arising with the Department. In addition, we received representations concerning, and subsequently took oral evidence on, specific protections which some considered might be lost if the proposed Order were enacted as it stood.

Articles 13 and 14 of the draft Order: "where necessary"

64. Article 13 deals with the provision of fire-fighting and fire detection equipment. It states that the responsible person must ensure that appropriate fire-fighting and fire detection equipment are supplied "where necessary . . . in order to safeguard the safety of relevant persons."

65. Article 14 deals with the provision of emergency routes and exits. It requires the responsible person to keep emergency exits from premises, and the routes to them, clear at all times "where necessary in order to safeguard the safety of relevant persons."

Concerns

66. Both the Fire Brigades Union (FBU) and the Chief Fire Officers' Association (CFOA) raised with us the drafting of articles 13 and 14 of the draft Order, since they considered that the inclusion of the words "where necessary" in the articles indicated a degree of discretion which would lead to a lowering of existing protection.

67. The FBU argued that the EU Workplace Directive, from which the requirements in both articles is derived, provides in relation to workplaces that "depending on the dimensions and use of the buildings, the equipment they contain, the physical and chemical properties of the substances present and the maximum potential number of people present, workplaces must be equipped with appropriate fire-fighting equipment and, as necessary, with fire alarms and alarm systems."[42] The Union argues that this provision requires workplaces to be equipped with some form of fire-fighting equipment appropriate to deal with risks present in the workplace. It contends that the caveat "where necessary" may allow the responsible person to decide that no fire-fighting equipment is necessary in his workplace, and claims that some have already interpreted the Fire Safety (Workplace) Regulations 1997 in this way.

68. The Union also noted that a number of the local Acts to be repealed by the draft Order contain specific requirements for the provision of fire-fighting equipment and of adequate

42 Ev 3, para 4.3

means of escape, without qualification.[43] It considered that repeal of these provisions and replacement by a qualified requirement would constitute a loss of necessary protection.

69. CFOA considered that the drafting of article 13 adopted the principles of a case which determined that fire protection equipment such as a sprinkler system was not necessary to protect premises from burning down where the fire might only contaminate the environment, but solely to protect the safety of relevant persons.[44] CFOA considered that the provisions of the draft Order were inconsistent with the provisions of Approved Document B of the Building Regulations, which require sprinklers to be provided in certain premises, and recommended that article 13 should reflect the requirements of Building Regulations.

70. Both the FBU and CFOA considered that the level of discretion afforded by the inclusion of the words "where necessary" in article 14 was unacceptable. The FBU stated that the relevant provision of the Directive provided that "to safeguard the safety and health of workers the employer shall see to it that . . . traffic routes to emergency exits and the exits themselves are kept clear at all times."[45] It considered the qualification in article 14 to be "a recipe for a disaster."

71. CFOA could not envisage a situation where an emergency exit route could be left obstructed when persons were still in a building. It further noted that article 14(2) of the draft Order does not include fire doors or any provision to ensure they are self-closing or fire-resisting, nor any provision to ensure that emergency routes are fire resisting. The operation of article 17 of the draft Order, which requires premises and facilities required under the provisions of the Order and any other enactments (including Building Regulations) to be in a suitable state of maintenance and in good repair, would not necessarily ensure that these features were installed under Building Regulations. If they were not installed, CFOA contended that a fire authority could not subsequently insist on their installation. It considered this a hidden statutory bar which should be removed.

The Department's response

72. In evidence to us, the Minister stated that "the phrase 'where necessary' is not designed to reduce protection in any way. It is to provide [a] necessary judgment about risk."[46] He argued that a regime requiring protections to be present where they were necessary was intended to provide that precautions should not be present where they were not necessary to protect relevant persons: "if they are not necessary to protect people, they can hardly be said to be providing necessary protection."[47] Responsible persons had a duty to make a risk assessment of what was necessary on their premises. Mr Jack, for the Department, pointed out that while existing legislation merely required fire-fighting equipment to be provided for the purpose of ensuring that a means of escape could be used, the proposed Order

43 Q 7 [Mr Evans]

44 Ev 9, para 5. We assume that the case concerned is the Court of Appeal case of *City Logistics v. Northamptonshire Fire Authority*, [2001] EWCA Civ 1216.

45 Ev 3, para 4.6

46 Q 94

47 *Ibid*.

would require such equipment to be provided to ensure the safety of relevant persons.[48] Dealing with the duty to keep fire escapes and the routes to them clear, he noted that some premises with reduced numbers of persons on them at certain times of the day or night might find it necessary to close off routes used as fire escapes "on the basis of risk, because [they] cease to be a necessary means of escape due to the . . . reduced number of people present."[49]

73. In additional evidence to the Committee, the Department addressed the issues raised by the FBU over the proper implementation of the EU Workplace Directive. The Department has pointed out that both elements of the Directive cited by the FBU appear in Annex 1 of the Directive, which is qualified at its opening by the phrase "the obligations laid down in the Annex apply whenever required by the features of the workplace, the activity, the circumstances or a hazard."[50] It argues that the provisions of the Directive therefore require a caveat to be built in to the draft Order.

74. The Department further argues that necessary protection cannot be removed by the draft Order, since fire precautions will always be necessary when required to protect the safety of persons. It notes that while the Fire Precautions Act may have required a feature of fire protection to be put in place regardless of risk, any such requirement in the case of a workplace would be over-ridden by the provisions of the Fire Safety (Workplace) Regulations 1997.

The Committee's view

75. We consider that the removal of any existing requirement to provide fire-fighting equipment and to keep emergency exits and the routes to them clear in all circumstances must constitute a loss of protection. The question is whether the protection constitutes a *necessary* protection, given the requirements which are to be put in place by the proposed Order and the requirements of the relevant EU Directive.

76. 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. The Department considers that this level of discretion is adequate, given the general duty on the responsible person to safeguard relevant persons from fire.

77. We consider that articles 13 and 14 will only maintain necessary protection if their effectiveness in practice is ensured. In our view this will only be so if guidance is provided by the Secretary of State (a) to responsible persons on what "where necessary" may mean, and (b) to enforcement authorities as to the effective performance of their duty to enforce these provisions of the Order. We address the issue of guidance further at paragraph 238 below. **We consider that articles 13 and 14 will only maintain necessary protection if guidance is provided as noted above.**

48 Q 95

49 *Ibid.*

50 Ev 33

78. We are concerned at the 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. **We consider that the Department should address the issues raised by the Chief Fire Officers' Association in this respect, and amend the draft Order if it appears necessary.**

Protection of firefighters

79. CFOA and the FBU remarked that article 2 of the draft Order, in its definition of "relevant person", expressly excluded "a firefighter who is carrying out his duties in relation to the function of a local authority." While off-duty firefighters on premises would be treated as relevant persons, and would therefore be subject to the protection of the Order, on-duty firefighters would not, even if their duties on the premises concerned were not connected with fighting fire.

80. The FBU and CFOA recognised that the person responsible for premises where a fire was being fought should not be responsible for firefighters' safety, since this was the duty of Fire Service employers and managers. CFOA pointed out that there were a number of other reasons for firefighters to be on premises in connection with their fire authority duties, such as giving advice, collecting operational intelligence and conducting fire safety inspections.[51]

81. The Department has acknowledged that the Order as drafted goes beyond what was intended in this respect. Mr Jack, for the Department, assured us that the draft Order would be amended to provide protection for firefighters who are legitimately on premises in pursuit of fire authority duties not connected with fighting fire or carrying out rescues from fire. He undertook to consult the Fire Service in the amendment.

82. **We recommend that the draft Order be amended to provide a necessary level of protection from fire for firefighters on premises in pursuit of fire authority duties other than firefighting or carrying out rescues from fire.**

Definition of "escape" and "place of safety"

83. The FBU remarked that the definition of "escape" in the 1971 Act had proved deficient, since it did not necessarily provide for a means of ultimate escape from a building: the owner or occupier of a building could legally provide for a means of escape from the building itself, but would be under no obligation to provide any further means of escape, even if the means provided ended in a closed courtyard from which there was no issue. The FBU noted that the 1971 Act had since been amended to remove this anomaly.[52]

84. While the FBU recognised that the definition of "premises" in the draft Order was far broader than the definition in the 1971 Act, it considered that "escape" should be defined in the draft Order in similar terms to the eventual definition in the 1971 Act.

51 Ev 9, para 3.1

52 By section 4(2) of the Fire Safety and Safety of Places of Sport Act 1987.

85. The draft Order in fact includes a requirement that emergency routes and exits must lead as directly as possible to a place of safety (article 14(2)(a)). CFOA considered that this should be defined as "a place of ultimate safety" for the avoidance of any doubt.[53]

86. The Department has stated that 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."[54] It considered that 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. It therefore considered it unnecessary to repeat the definition of 'escape' contained in the 1971 Act as amended.

87. While we accept the logic of the Department's argument, we are concerned that the present drafting of the Order may leave the matter ambiguous. A barrister constructing a case would no doubt have no difficulty in demonstrating that a defendant, in making inadequate provision for escape from the vicinity of premises, had not complied with the provisions of the Order: but such an issue may reach the courts only as the result of a misinterpretation of the provisions of the Order, a fire and subsequent casualties.

88. We consider that, for the avoidance of doubt, the Department should take the following steps to ensure that the duties of responsible persons are clear:

a) **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,** and

b) all editions of guidance issued to responsible persons on their obligations under the proposal should make it clear that the law requires them to provide a means of escape from premises to a place of safety beyond the premises and any area enclosed by it or with it.

Fire Precautions Act 1971

89. Paragraph 61 of schedule 2 to the draft Order repeals the Fire Precautions Act 1971—one of the two principal legislative bases for the present fire safety regime—in its entirety. Some provisions have not been re-enacted or replaced by means of the draft Order, and a number of these prompted submissions to the Committee.

Provision for adequate inspection and enforcement

90. The draft Order would repeal the Fire Precautions Act 1971 in its entirety. Section 1(1) of the 1971 Act requires a fire certificate to be obtained in respect of all premises which fall within the categories of use designated by the Secretary of State. Section 5 of the 1971 Act requires an application for a fire certificate in respect of designated premises to be made to the fire authority. Once the application is received, the authority is required to notify the

53 Ev 10, para 6.3

54 Ev 33

applicant of his fire safety duties during the period when the application is pending, and may require the applicant to provide plans of the premises.

91. Section 5(3) of the 1971 Act puts the fire authority under a duty to cause an inspection of the premises in respect of which an application has been received.[55] If the authority is satisfied that the means of escape, the means of securing the means of escape, the means of fighting fire and the means of raising the alarm are adequate, then the authority shall issue a fire certificate. The certificate is required to specify the use of the premises, the means of escape, the means of securing the means of escape, and details of the type and location of the relevant fire fighting devices and fire alarms, and may specify requirements imposed by the fire authority.[56]

92. The Department has identified the protections in the 1971 Act which it considers necessary in this respect. It considers that section 1 obliges the owner or occupier of premises which have a use designated by the Secretary of State to have such fire precautions as the fire authority deems necessary in the circumstances "to reasonably assure the safe evacuation of all persons in case of fire."[57] These protections are to be recorded on the fire certificate. Designated premises which do not require a fire certificate are obliged to take sufficient general fire precautions under section 9A of the 1971 Act. Workplaces which do not require fire certificates fall under the obligations imposed by the Fire Precautions (Workplace) Regulations 1997. The Department considers that all these protections are maintained by the substantive provisions of the draft Order (in particular articles 8 to 22), since they cover all the matters which could be provided for in a fire certificate (as defined in sections 6(1) and 6(2) of the 1971 Act) and the duties imposed on non-certificated premises by section 9A of the 1971 Act and the 1997 Regulations.

93. Section 18 of the 1971 Act places every fire authority under a duty to enforce the provisions of the Act and its subordinate regulations, and to appoint inspectors and to cause premises to be inspected. The Department states that the burden in section 18 is re-enacted by article 26 of the draft Order, which requires every enforcing authority to enforce the provisions of the Order and subordinate regulations, and to have regard to any guidance on enforcement to be issued by the Secretary of State.[58] It considers that articles 25 to 28 of the draft Order would continue any necessary protection by defining the enforcing authorities, placing a duty upon them to enforce the Order, giving them powers of entry and authorising officers of fire brigades to act on the behalf of fire inspectors.[59]

Concerns

94. Professor Rosemarie Everton, Professor of Fire Law at the University of Central Lancashire and a member of the Fire Safety Advisory Board and Sub-Group, drew

55 Mr Evans of the FBU appeared to state (at Q 8) that this provision of the 1971 Act was inserted by section 15 of the Fire Safety and Safety of Places of Sport Act 1987 (the 1987 Act), but had never been commenced. In fact all provisions of section 5(3) are in force. A separate provision placing a duty on fire authorities to cause premises to be inspected, which has never been commenced, was inserted into section 18 of the 1971 Act by section 10(8) of the 1987 Act: see Annex 3 and Appendix G.

56 Sections 6(1) and 6(2) of the 1971 Act

57 Explanatory statement, para 112

58 Explanatory statement, para 111

59 Explanatory statement, para 116

attention to the likely consequences of exchanging the existing regime of inspection and certification for an intensified and extended "self compliance" regime.[60] She made four points:

— certification had provided "both reassurance to the public and support for small business" over many years, and had reduced the incidence of large fires and fire-related injury;

— the removal of certification would lead to the removal of the specific statutory duty to inspect (under section 5(3) of the 1971 Act), which might lead to "a weakening of the impetus for the fulfilment of their duties by the regulated, and the fulfilment of their functions by the regulators";

— it was proposed to place an obligation on fire authorities to "institute, develop and maintain" an enforcement programme: but this programme might prove inadequate, and

— the potential convergence of insufficiencies in respect of the three points made above raised doubts as to whether the system instituted by the proposed Order would be sufficiently rigorous to provide for public safety and public reassurance in respect of higher-risk premises.

95. Both Professor Everton and the FBU considered that the proposed Order was deficient in that it provided for a duty to enforce the Order without placing a duty on fire authorities to carry out inspections or to develop an enforcement programme to do so.[61] The FBU also noted that the issue of fire certificates and the grant of exemptions from fire certification gave a "clear and measurable indication of the enforcement activities of the fire authorities": once certification was removed, there would be no basis for the existing Best Value performance indicator. The FBU considered that without demonstrable measures of inspection and enforcement, public confidence in fire safety procedures might be jeopardised.[62] Mr Tony Taig remarked that "there is definitely a risk of loss of confidence if we do not have some visible, transparent means of seeing how enforcement and inspection are working."[63]

96. The FBU further noted that the Department consulted on the principle of placing fire authorities under a duty to institute, develop and maintain an enforcement programme, to include details of how a fire authority might determine the frequency with which it would inspect premises.[64] It remarks that the proposal received "considerable support" at consultation stage and was not opposed.

97. In oral evidence Mr Glyn Evans of the FBU indicated some of the discussions which had taken place within the Fire Safety Advisory Board Sub-Group on the issue. Responding

60 Ev 15. Professor Everton's evidence was given in a personal capacity and without reference to her former membership of the Fire Safety Advisory Board.

61 *e.g.* Ev 2 [Fire Brigades Union]

62 *Ibid.*, para 2.3

63 Q 68

64 Ev 2, para 2.6. The proposal was raised in the Department's consultation paper *A consultation document on the reform of fire safety legislation*, Office of the Deputy Prime Minister, July 2002, paras 5.58–5.61

to the likely repeal of certification procedures, he said that the Sub-Group decided that "the critical factor in assuring the public was enforcement: the public need to be able to see that fire and safety rescue authorities who are operating as enforcers for the Order are in fact doing that, and that they should prepare and publish their fire safety enforcement programmes."[65]

98. From the Department's analysis of consultation responses it appears that 20 respondents agreed that there should be an enforcement programme and 43 considered that it should be published.[66] In the event, a duty to institute, develop and maintain an enforcement programme has not been included in the proposal for the Order. Instead there is a duty on fire authorities to have regard to guidance to be issued by the Secretary of State in performance of its duties. The Department has not, in the explanatory statement, offered any explanation for why the duty was removed from the proposal.

The Department's response

99. The Department, in its consultation paper on the proposal, made clear that it was not taking forward the proposals for formal validation of high-risk premises envisaged in the Green Paper *Fire Safety Legislation for the Future.*[67] The Department considered that it would be impracticable to define "high risk" premises in law in sufficient detail.[68] Instead, it had proposed to place the duty of instituting, developing and maintaining an enforcement programme on the enforcing authority.

100. In evidence to the Committee the Minister explained that this requirement to develop an inspection programme had been "overtaken by events": "subsequent to those ideas being thought through, we have introduced integrated risk management planning."[69] The Government proposes to publish a national framework for fire service activity, which will "put in place a clear responsibility to get on with [the] job of ensuring that enforcement takes place . . . the combination of an integrated risk management plan and annual action plan which is renewed and reviewed will kick the fire and rescue authorities into a different way of operating to ensure that they are enforcing where there is the greatest risk."[70] The Minister stated that the Fire Inspectorate would promote good practice and that comprehensive performance assessments would provide a mechanism to assess the overall performance of fire authorities, including enforcement. Mr Hope considered that this combination of measures "will provide the necessary managerial pressure upon the services to improve their performance where it is found that they need to do so."[71] He stressed that the object of the system was to target inspection resources at those areas with highest risk.[72]

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65 Q 8

66 Explanatory statement, Annex C, "Enforcement programme"

67 Home Office/Scotland Office, November 1997

68 *A consultation document on the reform of fire safety legislation*, para 5.58

69 Q 113

70 *Ibid.*

71 Q 115

72 Q 116

Our assessment

101. We recognise that there are instances where the present statutory requirement for certification and inspection may place too rigid a straitjacket on fire authorities, leaving them less time and fewer resources to devote to other aspects of firefighting, fire protection and rescue. We are nevertheless concerned that the new proposal to develop enforcement programmes through integrated risk management planning and its associated tools does not appear to have been subject to consultation. We can find no evidence that it was considered by the Fire Safety Advisory Board before being introduced to replace a proposal which appeared to have secured widespread support from the Board.

102. The FBU did in fact agree that a general duty of enforcement accompanied by a code of practice issued in the form of guidance would achieve the necessary protection in a more dynamic form.[73] Since the draft Order contains provision for the Secretary of State to issue guidance to authorities on enforcement, we consider that the Union's concern on this point has in fact been met.

103. We are nevertheless concerned that the modern integrated risk management regime with its complementary pressure points, which the Minister outlined for us, lacks any real legislative force. Mr Tony Taig remarked that there was nothing in the draft Order to preclude a means of assessing how inspection and enforcement processes are working under the draft Order, "but there is nothing to require it either."[74] We are not yet convinced that a legislative requirement can adequately be replaced in full by a regime which will operate by purely administrative means, determined by performance targets and by local circumstances. Moreover, these approaches to fire service management are not fully tried and tested, since they are in the process of being rolled out across the Service. **On the evidence before us, we are not yet convinced that the integrated risk management regime, which is still in its infancy, will adequately maintain the necessary levels of protection to be found in existing legislation in respect of the inspection of premises and the enforcement of fire safety measures**.

104. In our view, a level of protection equivalent to that which presently exists might be achieved if the Secretary of State were to be placed under a duty to issue guidance to fire authorities on their enforcement of the Order, to monitor the enforcement activity of each fire authority and to give directions on enforcement to any authority whose enforcement performance appeared to be slipping. We consider that this proposal would maintain public confidence in the system of enforcement and would retain a necessary overview of enforcement patterns, while keeping the flexibility which the draft Order properly allows fire authorities in the exercise of their duties. **We 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**.

73 Q 9

74 Q 68

105. While the Minister may wish to consult with fire authorities on the framing of this requirement, we do not consider that it falls outside the scope of the original consultation. We consider that the amendment is appropriate to be made without re-consultation.

Enforcement of regulations

106. Section 12 of the 1971 Act gives power to the Secretary of State to make regulations. Section 12(4) provides that the regulations may provide that contravention of specified provisions of the regulations is an offence. This provision does not appear in article 24 of the draft Order, which otherwise substantively re-enacts the provisions of section 12. The explanatory statement seemed to imply that regulations made under article 24 of the draft Order might create offences.[75] If this were the Department's intention, then the omission of a provision equivalent to section 12(4)(c) of the 1971 Act may be considered a failure to maintain necessary protection, since it does not provide adequately for the enforcement of regulations which are designed to secure safety from fire.

107. Mr Evans of the FBU also raised with us a similar issue: the fact that article 32(1) makes it an offence to fail to comply with any requirement or prohibition imposed by articles 8 to 21 and 38 of the draft Order where that failure would place one or more persons at risk of death or serious injury in case of fire. He considered that it would be more appropriate for the fire authority simply to allege a failure to comply and to leave the seriousness of the offence for the courts to decide.[76]

108. We asked why the draft Order did not continue the effect of section 12(4)(c) of the 1971 Act, but instead provided that contravention of specified provisions of the Order should be an offence only where it placed a relevant person at risk of death or serious injury. The Department responded that it considered it more appropriate to address minor breaches by informal advice or, where appropriate, an enforcement notice, leaving direct prosecution as an option where a failure to comply actually placed a relevant person at a serious level of risk.[77]

109. The Department explained that it intended to take a similar approach in respect of regulations made under article 24 of the draft Order. It states that such regulations would be used to specify the particular types of fire precautions which would apply to risks posed by a particular set of premises (such as sub-surface railway stations[78]), complementing the more general fire safety measures set out in articles 8 to 22 of the draft Order.[79] It therefore considered it desirable to render the provisions for failure to comply with any requirement or prohibition imposed by those regulations consistent with those for failure to comply with the general fire safety duties set out in articles 8 to 22.

110. The Department acknowledges that the apparent effect of the failure to continue the effect of section 12(4)(b) of the 1971 Act would be to reduce the criminal sanctions

75 Explanatory statement, para 342

76 Q 14

77 Appendix B, para 3

78 Although the Department does not intend to make provision for regulations under article 24 to continue the effect of the Fire Safety (Sub-surface Railway Stations) Regulations 1989: see paragraph 122 below.

79 Appendix B, para 6

available for failure to comply with regulations made under section 24, which would diminish the effectiveness of enforcement. The Department's view is that enforcement would continue to be effective, although not every breach of regulations made under section 24 should result in prosecution. The Department considers that an "effective and proportionate enforcement regime" would consist of prosecution for the most serious offences, combined with power to serve an enforcement notice on less serious breaches, and the threat of a criminal sanction for failure to comply with such a notice.

111. The Department also notes that "seemingly minor breaches of regulations might put a person at risk of death or serious injury in the event of fire", such is the risk which fire poses: it would therefore be unlikely to be difficult to prove that a failure to comply would have put relevant persons at risk of death or serious injury.[80]

112. **We consider that the dual options of prosecution (provided for in articles 32(1) and 32(2) of the draft Order) and the service of enforcement notices adequately retain the level of necessary protection provided by the 1971 Act**.

Modification of leases to allow alterations

113. Section 28 of the 1971 Act allows the court to modify agreements and leases, and apportion expenses, where a person is required to carry out alterations to premises by virtue of a requirement imposed under the 1971 Act but is prevented from doing so by reason of the terms and conditions of an agreement or lease. In its explanatory statement the Department did not explain why the draft Order did not include a corresponding provision.

114. We considered that cases where a notice is served under article 29, 30 or 31 or a requirement is imposed by regulations under article 24 would be particularly relevant, since the existing provision might be considered a necessary protection for a tenant who could not otherwise make alterations to premises necessary to comply with fire safety requirements under the draft Order.

115. We asked the Department to explain whether the provisions of section 28 of the 1971 Act were considered necessary protections. The Department explained that it considered the protections of section 28 of the 1971 Act, allowing a court to alter the terms of a lease, operated in two cases: where a notice under section 3 of the 1971 Act, relating to certain premises used as a dwelling, was in force, and to premises where a fire certificate is required or in force, exempt premises (to which section 9A of the 1971 Act applies) and premises to which regulations made under section 12 of the 1971 Act apply.[81]

116. The Department states that section 3 of the 1971 Act has never been commenced, and the protections provided by it therefore remain theoretical. Nevertheless, the Department considers that a similar level of protection to section 28 of the 1971 Act would be provided in this respect by article 5(3) of the draft Order. This imposes a duty on every person other than the responsible person who has to any extent control of premises, insofar as the requirements relate to matters within his control. The Department considers that where

80 *Ibid.*, para 7

81 *Ibid.*, para 8

the terms of a lease prevented a responsible person from carrying out any alterations to premises, enforcement action could be taken against the lessor under article 5(3) to ensure that consent was given to the works.

117. The Department also points out that section 19(2) of the Landlord and Tenant Act 1927 and section 81(1) of the Housing Act 1980 imply terms into both leases and protected and statutory tenancies, to the effect that a landlord may not unreasonably withhold consent from the making of improvements to a property. The Department considers it "reasonable to assume that a court would consider that it would be unreasonable to withhold consent to the making of an alteration which was necessary to ensure the safety of persons in or on the premises."[82]

118. The Department now considers that articles 30 and 31, which allow for an enforcement or prohibition notice to be served on the responsible person, and article 32(1), which provides for offences committed by the responsible person, are too restrictively drafted in the context of article 5(3). It concedes that the articles as drafted would not extend to persons who are not the responsible person but, by virtue of article 5(3), have the same duties imposed upon them.

119. The Department has therefore indicated that it will amend articles 30, 31 and 32(1) to enable enforcement action to be taken against any person who has failed to comply with their duties in respect of premises under article 5(3) of the draft order. **We agree that 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. We recommend that the draft order be so amended.**

Regulations under section 12 of the 1971 Act

120. The proposed Order would revoke the Fire Precautions (Sub-surface Railway Stations) Regulations 1989[83] ("the 1989 Regulations"), which set minimum standards for fire precautions to apply at sub-surface stations. The 1989 Regulations are made under section 12 of the Fire Precautions Act 1971, and were brought into force as a result of the Fennell Report on the fire disaster at King's Cross underground station in November 1988. Article 24 of the draft Order would give the Secretary of State a similar power to make regulations to deal with fire safety on particular categories of premises.

121. We received a representation expressing concern that the draft Order would remove the minimum safety standards which presently apply to sub-surface railway stations "and instead allow management the freedom to risk assess fire safety measures":

> It is unclear to . . . London Underground users and employees how such a measure will improve fire safety on the Underground and indeed there are fears that without minimum standards corners will be cut and safety compromised.[84]

82 *Ibid*., para 11

83 S.I. 1989/1401, as amended by S.I. 1991/259 and S.I. 1994/2184

84 Appendix F: letter from John McDonnell MP, Convener of the RMT Union Parliamentary Group

We therefore asked the Department whether it had plans to make regulations under article 24 of the draft Order to provide for fire safety in sub-surface railway stations, whether such regulations, if any, would replicate the provisions of the 1989 Regulations, and how the recommendations of the Fennell Report would be continued under the proposed Order.

122. The Department has stated in response that it has no plans to make separate regulations for fire safety in sub-surface railway stations.[85] As a result of its consultation with enforcing bodies and others, it has come to the view that the provisions of the draft Order, when taken together with the Railway (Safety Case) Regulations 2000 ("the 2000 Regulations"),[86] enforced by the Health and Safety Executive, will continue all necessary protection implemented by the 1989 Regulations. It notes that the 1989 Regulations are "highly prescriptive", although the enforcing authority is allowed some discretion.

123. The Department considers that all the necessary protection which is provided by the implementation of the Fennell Report recommendations (by means of the 1989 Regulations) would be continued by the effect of the draft Order and the 2000 Regulations, although it has identified an aspect of the 2000 Regulations which would be limited by the operation of the draft Order and intends to make an appropriate amendment to the Order. The Department has indicated that the requirement in the 1989 Regulations which provides that shifts shall be arranged so that two people are at work at all times when the public are present[87] may be relaxed by the fire authority at its discretion.[88] In addition, the Department considers that the requirement for there to be sufficient staff to implement the fire safety arrangements is carried forward by articles 11, 15 and 18 of the draft Order.

Our assessment

124. The particular concern over the potential loss of protection from the revocation of the 1989 Regulations was raised with us only after we had taken oral evidence from the Minister. In the limited time available to us, we have not had the opportunity to make a thorough assessment of the 1989 Regulations and the degree to which the protections contained in them are continued in the draft Order and the 2000 Regulations. We are nevertheless concerned that the high level of protection contained in the 1989 Regulations, reflecting the unique nature of fire risks in sub-surface railway stations, should be continued.

125. Given the nature of sub-surface railway stations, and the substantial numbers of relevant persons who use them each day, there must be a very strong public interest in ensuring their safety from fire. It does not appear to us that the operation of the Regulations places a disproportionate burden on the management of sub-surface railway stations, and it has not yet been demonstrated that fire safety in such stations would be enhanced by the removal of the 1989 Regulations in favour of the risk-based regime contemplated in the proposed Order. We have also received no indication that any

85 Appendix H, Q 48

86 S.I. 2000/2688

87 S.I. 1989/1401, regulation 10(4)

88 Regulation 12(1)

guidance will be issued to indicate what fire safety provisions should be made for sub-surface railway stations under the proposed Order.

126. In our view the Department has not yet made a convincing case for the revocation of the 1989 Regulations. The Regulations do impose a prescriptive regime for fire safety in underground stations which we recognise is not in keeping with the goal-based approach which the Department wishes to take in the proposed Order: but the draft Order itself makes provision for the imposition of similar regimes through regulations under article 24.

127. We consider that the provisions of the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 constitute necessary protections. On the evidence presently before us, we are not convinced that the provisions will be adequately carried forward under the general provisions of the draft Order and the Railway (Safety Case) Regulations 2000, as amended. **We consider that the provisions of the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 should remain in force. We therefore recommend that Schedule 5 to the draft Order be amended to remove the references to the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, the Fire Precautions (Sub-surface Railway Stations) (Amendment) Regulations 1991 and the Fire Precautions (Sub-surface Railway Stations) (Amendment) Regulations 1994.**

128. We note that once the Order is in force the Secretary of State may make regulations under article 24 which would revoke the 1989 Regulations. Any decision to keep the 1989 Regulations, as amended, in force beyond the entry into force of the draft Order is therefore by no means irrevocable.

129. Another solution might be the provision of guidance by the Secretary of State on the operation of fire safety requirements in sub-surface railway stations. We note that London Underground Limited, in its response to the consultation on the proposal, stressed the need for guidance on implementation of the proposed Order.[89] Such guidance could include all the elements of protection prescribed in the 1989 Regulations.

Rent Act 1977

130. The proposed order would repeal section 140 of and Schedule 20 to the Rent Act 1977. The explanatory statement describes this as "purely consequential or incidental".[90]

131. Paragraph 1 of that Schedule provides for expenditure incurred by a landlord in carrying out work required by a notice under the Fire Precautions Act 1971 Act to be treated as expenditure on improving the premises. This will be taken into account in determining the rent which he is entitled to charge under a regulated tenancy. Paragraph 3 of that Schedule is also material to the rent that may be charged under a regulated tenancy where an order has been made under section 28 of the 1971 Act (see paragraph 113 above).

132. We considered that these provisions might constitute necessary protections, not only because they protect the landlord against unreasonable financial loss if he is required to carry out work to improve the premises, but also because they reduce any disincentive the

89 Not printed

90 Explanatory statement, paragraph 64

landlord may have to carry out such improvements. We therefore asked the Department whether the effect of these provisions was achieved in the draft Order, and, if so, how.

133. The Department responded that paragraphs 1 and 3 of Schedule 20 to the 1977 Act have never effectively had any statutory force.[91] Schedule 20 applies to dwellings which are the subject of protected or statutory tenancies, as defined in section 18 of the 1977 Act. Paragraph 1 of Schedule 20 applies where a dwelling which is the subject of a protected or statutory tenancy consists of, or is comprised in, premises in respect of which a fire certificate has been issued under section 3 of the Fire Precautions Act 1971 covering the use of the premises as a dwelling. Since section 3 of the 1971 Act has never been commenced, paragraph 1 has never had any statutory effect.

134. Similarly, paragraph 3 of Schedule 20 applies only where an order under section 28 of the 1971 Act increases the rent payable in respect of premises let on a protected tenancy under section 18 of the 1977 Act. Since section 28 of the 1971 Act only applies where a notice under section 3 of the 1971 Act relating to premises is in force, and section 3 has never been commenced, paragraph 3 has no statutory effect.

135. **We are satisfied that no necessary protection is removed in this respect.**

Building Act 1984

136. The draft Order would repeal section 71 of the Building Act 1984. This provides that where a local authority considers that a building is not provided with sufficient entrances, exits, passages or gangways it must serve a notice requiring the owner of the property to carry out the required works and to make the necessary provisions.[92]

137. The provision has a clear application and purpose in terms of fire safety. Insofar as the protection provided relates to fire safety, it is adequately maintained by the specific provisions of article 14 of the draft Order, which places a duty on the person responsible for premises to arrange for adequate emergency routes and exits.

138. We considered it possible that section 71 of the Building Act had a wider purpose than that of achieving general fire safety. If that were so, then its repeal and replacement by a provision specifically geared to fire safety protection might remove other forms of protection. We therefore asked whether the object of section 71 of the Building Act 1984 was specifically related to fire safety, or whether it has an application which is not related to fire safety.

139. The Department confirmed that section 71 of the 1984 Act is specifically related to fire safety and has no other application.[93] **We are content with the Department's explanation, and therefore consider that no necessary protection is removed in this respect.**

91 *Ibid*., para 13

92 Explanatory statement, para 245

93 Appendix B, paras 16–17

Local Acts

140. The proposed Order would repeal fire safety provisions in a total of 33 local Acts. Concerns have been expressed that the explicit protection in several of the Acts would be removed. The Department has set out in relation to each Act what burdens it is intended to remove and how the necessary protection afforded is to be continued.[94] Mr Evans, of the FBU, told us that "many of the local Acts that are listed in the rear of the RRO contain . . . provisions [for escape and fire-fighting equipment] . . . they are quite definite provisions."[95]

141. We asked the Department what account had been taken of consultation responses which questioned the removal of specific protections in local Acts. The Department stated that the Government's policy is "to remove provision[s] in local Acts as and when they cease to be necessary": the draft Order would repeal only those provisions which are covered by national provision or the proposed Order.[96] The Department has reviewed the representations received in conjunction with the Buildings Regulations Advisory Committee and the Fire Safety Advisory Board. It considers that the provisions to be removed will cease to be necessary, since the necessary protections are contained in existing Building Regulations and the draft Order.

142. **We have received no evidence which indicates that necessary protections will be removed if the proposed repeals in local Acts are made. In the absence of evidence to the contrary, we consider that necessary protection in this respect is maintained.**

d. Consultation

143. The Department published the consultation document on 30 July 2002, and the consultation period closed on 22 November 2002. The Department agreed to take into account any responses received after that date.[97] Copies of the consultation document were sent to companies and organisations identified by the Department as likely to be affected by the legislation.[98] In addition the Department sent out a further 8,000 copies on request, and published the document on three Government websites.

144. 276 responses were received to the consultation: the respondents are listed in annex B to the explanatory statement. The Minister told us that the Department was "very encouraged by the level of response, which was relatively high for this kind of exercise, and the way that the fire community, the business community and others have responded and become engaged in the process."[99] At our request, the Department was able to make copies of the consultation responses available in September 2003, well in advance of the proposal's laying date. We are grateful for the Department's co-operation in this matter, which enabled Committee staff to make advance preparation for our scrutiny of the proposal.

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94 Annex B lists the Acts affected and indicates where the issues of necessary protection are addressed in the explanatory statement.

95 Q 7

96 Appendix D, Q 23

97 Explanatory statement, para 28

98 The list is at annex B of the explanatory statement.

99 Q 87

145. We were less happy with the Department's presentation of the responses to the consultation. An analysis of the consultation responses was prepared and annexed to the explanatory statement.[100] We found this document of limited use. It fell into two parts: a high-level indication of the responses from each sector in favour and opposed to the proposal on a number of grounds (for example, necessary protections, new burdens, and costs and benefits), and then a more detailed aggregation of responses under several headings, which summarised the point of view expressed in a response in a headline and then gave the identification number of all responses which took that view on the point. We recognise that it is difficult to produce a meaningful and accurate summary of nearly three hundred consultation responses in a form which will be accessible to the reader; but we consider that more care could have been taken to produce a document which provided an accessible analysis of the points made in response to consultation. **We remind Departments that explanatory statements are laid before Parliament as a whole. We consider that they should be accessible to Members of both Houses and to the public at large.** In this instance the Department might have considered the broader readership of the response summary before providing a document which is fully intelligible only when read in conjunction with the entirety of the consultation responses.

146. The Department indicated that the Legislation Sub-Group of the Fire Safety Advisory Board considered the responses to the consultation to identify which proposals required amendment and which could be taken forward without further consultation.[101] Separate consultations were held with some respondents. The Department identified nine amendments which had been made to the proposal following these processes and in the light of the responses received. These amendments are set out in the explanatory statement. They include amendments to the proposed alterations notice and enforcement notice procedure, provision to allow the Secretary of State to determine enforcement disputes on technical issues, correlation between the draft Order and licensing law, changes to the enforcing authorities for sports grounds, a refinement of the definition of general and special fire precautions, and the removal of the proposals for forcible entry to investigate the cause of fire and for the duty of community fire safety.

147. We note that the Department did not choose to identify other changes made to the proposal which did not presumably arise as a result of consultation. We have referred at paragraph 96 above to the proposed duty to institute, develop and maintain an enforcement programme which the Department included in the consultation paper. This proposal received significant support, but was not included in the proposed Order because, as the Department explained, new methods of fire service management being introduced rendered it unnecessary.

148. Section 6(2)(l) of the Regulatory Reform Act 2001 requires the Minister to include in the explanatory statement laid as part of the proposal for a regulatory reform order details of any changes which have been made to his original proposals in the light of responses received to consultation. Although the change to the proposal which was made in this case was apparently not made in response to consultation, we consider that the proposed duty was sufficiently significant in the context of the draft Order that its removal from the

100 Explanatory statement, annex C

101 Explanatory statement, para 31

proposal should have been indicated and explained in the explanatory statement, and we are concerned that it was not in this case.

149. We are required under the terms of our Standing Order to report to the House on whether the proposal has been the subject of, and taken appropriate account of, adequate consultation. On the evidence of the thoroughness of the consultation document, the number of such documents issued and the number of responses received, **we consider that the consultation process has been adequate.**

150. In the absence of a fully adequate summary and analysis of the consultation responses and the Department's response to them, we have been required to seek further evidence in order to assess whether the Department has taken appropriate account of the consultation. We asked our witnesses for their impressions of the process. Mr Evans of the FBU considered that the consultation process had been "well undertaken", although its conclusions had been overtaken by events;[102] he thought that many of the issues which the FBU had raised in response had been taken into account, save those which were the subject of the Union's submission to the Committee. Mr Marles of CFOA was "fairly happy with the process and the way it has gone forward":[103] apart from the issues CFOA had brought to the Committee, CFOA was "quite happy that [it had] been consulted."[104] Professor Everton, who sat on the Legislation Sub-Group of the Fire Safety Advisory Board which analysed the consultation responses, said that she was impressed with the care and attention given to the process: "I thought it was done with the utmost attention and in detail."[105]

151. We asked the Department what account it had taken of certain issues which had been raised in the consultation responses but did not seem to have been addressed in the explanatory statement. In particular, we were concerned to see in the summary of the consultation responses that a large number of respondents had been concerned about necessary protection issues, but the Department had provided no analysis of these. We therefore asked the Department to indicate the grounds on which the respondents had considered that necessary protection might not be maintained. The Department stated that most respondents were concerned that the precautions in place under the proposed regime would be less than if a fire certificate were issued and the relevant precautions listed on its face.[106] It concluded that this necessary protection would be maintained "by the application of legal responsibilities and the ability of an enforcing authority to monitor and check the precautions in place."

152. The Department set out seven further main headings under which respondents had raised concerns, including the sufficiency of funding for fire authorities to police the regime and train staff; the provision of a form of validation for high-risk premises; the particular difficulties encountered in enforcing safety standards in hotels and sports grounds; the quality of certification of fire safety products and services; the level of protection in provisions of local Acts it was proposed to repeal; the application of regimes

102 Q 2

103 Q 17

104 Q 18

105 Q 47

106 Appendix D, Q 21

in England and Wales and Scotland and the rights of fire authorities to set fire safety conditions in licensed premises. The Department has indicated that in each case it has considered the points raised and formed a judgment on them, most of which have been addressed elsewhere in the evidence provided by the Department either orally or in writing.

153. Following the Department's explanation, **we are satisfied that the Department has taken appropriate account of adequate consultation in drawing up the proposal. We nevertheless consider that the Department's initial account of the consultation process and the issues raised as a result of consultation, as set out in the explanatory statement, fell below the standard of information which we believe should have been provided to Parliament on this proposal.**

e. Charges on the public revenues

154. The Department states that the draft Order would not provide for the payment of fees or charges in consideration of any licence or consent, or of any services to be rendered.[107]

155. The Department has nevertheless identified some provisions of the draft Order which may impose charges upon public revenue:[108]

— Article 24 gives the Secretary of State the power to make regulations. Exercise of this power would cause the Secretary of State to go to the administrative expense of consulting on and making regulations, but the exercise of the power is clearly at the Secretary of State's discretion.

— Article 25(c) makes the Ministry of Defence's fire service the enforcing authority in respect of premises occupied by Crown forces, and would result in the Secretary of State for Defence incurring the resultant costs of enforcement. The Department states that since this provision re-enacts the effect of the Fire Precautions (Workplace) Regulations 1997, which are already in force, there is unlikely to be any additional enforcement cost.

— Article 36 provides for technical disputes to be determined by the Secretary of State, which might involve administrative costs. The Department considers that these would be modest.

— Article 46 obliges Government departments and other public authorities to consult the enforcing authority before taking any action in respect of premises which might affect their fire precautions. The Department believes that the administrative costs of consultation would be modest.

— Article 49 applies the Order, in modified form, to the Crown and to the Houses of Parliament. The Department states that since the Fire Precautions Act 1971 and the Fire Safety (Workplace) Regulations 1997 already apply to the Crown and to Parliament in a similar way, no additional expenditure to comply with the obligations of the proposed Order is likely to be necessary.

107 Explanatory statement, para 376

108 Explanatory statement, para 377

f. Retrospective effect

156. The Department states that the draft Order would not have retrospective effect.[109] It would affect the ability of licensing authorities to set terms and conditions relating to general fire safety, but these provisions would not affect existing licensing conditions, as they would only take effect when the licensing conditions were varied or renewed. Article 43 of the draft Order would suspend the operation of licensing conditions for as long as the draft Order applied to the premises concerned, while article 44 would suspend the operation of pre-existing byelaws. The Department states that this re-enacts the effect of section 31 of the Fire Precautions Act 1971.

g. Vires

157. We do not have any doubts as to the *vires* of the proposed Order.

h. Elucidation and drafting of the proposal

Common parts of houses in multiple occupation (HMOs)

158. The Department has stated that HMOs are subject to housing law and not to fire safety law. Those parts of HMOs which are used as domestic premises fall outside the scope of the draft Order (article 6(1)(a)). We note that the Department appears to have passed up an opportunity to clarify and extend fire safety law to cover those parts of HMOs which are used as domestic premises.

159. The Department states that insofar as HMOs "have common parts or may be used as a place of work" the draft Order applies to them. The definition of "domestic premises" given in article 2(1) excludes external common parts of premises, so the draft Order applies to the external common parts of HMOs. It is less certain how the draft Order is to be applied to internal common parts of HMO premises, such as halls, stairways or landings.

160. We asked the Department to explain how the draft Order was intended to extend to the internal common parts of HMOs, given that the definition of "domestic premises" in article 2 of the draft Order appeared not to exclude such internal common parts. The Department has explained that the draft Order is intended to apply to the internal common parts of dwellings (such as HMOs), but not to dwellings used as private living accommodation (defined as "parts of a dwelling a person has a right to occupy on their own account and does not share with the occupants of other private living accommodation").[110]

161. Premises occupied as private dwellings are excluded from the draft Order under article 6(1)(a), but all other premises (apart from those expressly excluded by articles 6(1)(b) to (g)) are expressly included by the operation of article 6(2). **We are content with the elucidation which the Department has provided on this point.**

162. CFOA queried how article 17 of the draft Order, which requires fire safety equipment on premises covered by the Order to be maintained "in an efficient state, in efficient

109 Explanatory statement, para 381

110 Appendix B, para 18

working order and in good repair", would apply in HMOs, where a fire detector placed in the common area of a building would be required to be maintained but a detector on the same system in a flat occupied as a private dwelling would not be required to be maintained.[111] CFOA further pointed out that damage to a front door of an HMO flat occupied as a private dwelling might adversely affect the fire protection afforded to the common parts of the HMO outside the door, but such damage could not be required to be repaired.

163. We consider that the drafting of the order as it applies to the maintenance of fire protection systems in houses in multiple occupation is unclear and may reduce the protection available for the common parts of HMOs. **We 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 an HMO, whether or not they fall within parts of the HMO which are defined as "domestic premises"**.

Issue of alterations notices

164. Article 29 of the draft Order provides that an enforcing authority may serve an alterations notice on a responsible person if the premises "constitute a serious risk to relevant persons". CFOA requested further guidance on the interpretation of the term "serious risk", since this would determine the level at which such issues should be addressed and the workload which might be created for fire services. CFOA considered that the term should apply to premises where the fire risks were addressed by engineering solutions and automatic systems, such as large retail premises and multi-story shopping centres "where the line from what can be classified as safe to dangerous conditions is very fine." CFOA considered that fire authorities should be informed if material alterations were to be carried out on such premises in all cases, even if the material alterations were covered by Building Regulations.

165. Mr Jack, speaking for the Department, considered that the risk at issue was that of death or injury in the event of fire. He conceded that the term "serious risk" was a subjective one, and therefore not susceptible to further definition: "I do not think there is a way round it. It has to be a professional making a judgment that the potential for someone to be killed or injured here is sufficient to warrant further action, as they would be in any form of enforcement activity." He nevertheless considered that the matter might be the subject of guidance on enforcement to be issued by the Secretary of State under article 26(2) of the proposed Order. In the Minister's opinion, guidance would give fire service professionals the flexibility to make judgments on the ground, but would ensure a degree of consistency.

166. We are not in a position to advise on the precise definition of "serious risk" in this context. We agree with the Minister that the matter is best defined by the experienced professional on the ground, operating within the parameters of guidance issued by the Secretary of State. **We recommend that the Secretary of State issue guidance to fire**

111 Ev 10 [Chief Fire Officers' Association]

authorities on the exercise of the power to serve alterations notices, and the definition of the term "serious risk".

167. We had a further concern with the drafting of article 29. Article 29(1)(b), as drafted, provides that the article applies to all premises which may constitute a serious fire safety risk to relevant persons "if any change is made to them or the use to which they are put". The drafting is such that the article would apply to all non-domestic premises insofar as their use might be changed at some unspecified point in the future.

168. The Department confirmed, in response to our questions, that it did not intend that an unlimited power to serve an alterations notice should be conferred by virtue of section 29(1)(b). The position the Department has sought to achieve is that "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".[112] The Department considers that article 29 as drafted, though not unlimited, would confer a wide power to serve an alterations notice, which would allow enforcing authorities "to target [alterations] notices on those premises [they consider] pose the greatest risk to safety (or which might do so if there was an alteration to the premises).[113]

169. In our view, the drafting of article 29(1)(b) does not adequately reflect the Department's intention, and appears still to confer an unlimited power to serve a notice. We consider that the desired effect could be achieved by amending article 29 to provide that—

a) the power to serve an alterations notice applies where the authority is of the opinion that the premises are as stated, and

b) the alterations notice states the authority's opinion and specifies the matters which, in the authority's opinion, give, or may give, rise to a serious risk.

We consider that this approach more closely follows the drafting adopted in articles 30 and 31. It is more appropriate since it requires the case for serving the alterations notice to be demonstrated in each case.

170. We also consider that the emphatic "any change" in article 29(1)(b) ought to be amended to "a change". We do not consider that the Department's intention is to restrict the power to serve a notice to circumstances where any change, however trivial, must give rise to the risk. **We recommend that article 29 be so amended.**

171. Article 29(2) empowers an enforcing authority to serve an alterations notice on the responsible person in charge of premises which constitute a serious risk to relevant persons. Article 29(3) requires the responsible person in receipt of an alterations notice to notify the enforcing authority of any proposed changes to premises of a defined nature which might result in an increase of risk. The defined changes are set out on article 29(4): article 29(4)(c) refers to "an increase in the quantities of dangerous substances which are present in or on the premises".

112 Appendix B, para 23

113 *Ibid*., para 25

172. The existing legislation, which is to be repealed and re-enacted, refers to dangerous substances present "in, on or under" the premises. We asked why the word "under" had been omitted from article 29(4)(c). The Department explained that the definition of "premises" in the proposed Order (article 2(1)) was broader than that in existing legislation in that it included any place: therefore any underground place in which dangerous substances were stored would fall within the definition of premises.[114] **We are content that this provision is appropriately drafted**.

Definition of "safe" and "safety"

173. "Safety" is defined in article 2 of the draft Order as "the safety of persons in the event of fire". Mr Tony Taig pointed out that this definition might be deficient, in that it could be interpreted to exclude fire precautions and fire prevention. He considered that a better definition of "safety" might be "the safety of persons in respect of harm caused by fire".

174. We agree with the comment made by Mr Taig, which seems particularly relevant in the context of the duty to take general fire precautions contained in article 8 of the draft Order. **We therefore recommend that the Department consider amending the definition of "safety" in article 2 to make its extent more explicit.**

i. EU obligations

175. The Department states that the draft Order would give effect, in England and Wales, to the following European Union obligations, insofar as they relate to general fire precautions to be taken by employers and insofar as more specific legislation does not make appropriate provision:

— **Council Directive 89/391/EEC**, a framework directive on the introduction of measures to encourage improvements in the health and safety of workers at work;

— Article 6 of, and paragraphs 4 and 5 of the annexes to, **Council Directive 89/654/EEC ("the Workplace Directive")**, a directive concerning the minimum safety and health requirements in the workplace;

— **Council Directive 98/24/EC ("the Chemical Agents Directive")**, on the protection of the health and safety of workers from the risks related to chemical agents at work, and

— **Council Directive 99/92/EC ("the Explosive Atmospheres Directive")**, on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres.[115]

176. In the Department's view, the proposals are compatible with the UK's European Union obligations.

177. The FBU raised with us the apparent incompatibility of articles 13 and 14 of the draft Order with the Workplace Directive. We have addressed the Union's representations and the Department's response at paragraphs 66 to 77 above. We consider that the Department

114 Appendix B, para 26

115 Explanatory statement, para 382

has demonstrated that the wording of articles 13 and 14 is consistent with the requirements of Annex 1 to the Workplace Directive.

178. **We find no reason to consider that the proposal is incompatible with any obligation arising from the United Kingdom's membership of the European Union.**

j. Rights and freedoms

179. The Department does not consider that the proposal would prevent anyone from exercising a right or freedom which they might otherwise expect to exercise. It states that the draft Order would impose requirements and prohibitions on persons in connection with premises, but it considers that these are both necessary and proportionate to ensure the protection of persons who use the premises or who may be affected by a fire on the premises.[116]

180. Section 36 of the 1971 Act conferred a right upon local authorities to make loans to meet expenditure on altering residential buildings as required by a fire authority. We considered that this might be in the nature of a right or a freedom. In the absence of any express indication in the draft Order, we asked the Department whether, and how, the provision was to be continued.

181. The Department answered that the right under the 1971 Act has never had legislative effect, since the provision it depends on (section 3 of the 1971 Act) has never been commenced.[117] It pointed to a broader power in the Housing Act 1985 which makes essentially similar provision for local authorities to advance money for alterations to a house.

182. **We do not consider that the proposed Order affects any existing rights or freedoms.**

k. Proportionality and fair balance

New and re-enacted burdens in the draft Order

183. The Department has briefly described, in the explanatory statement, the new and re-enacted burdens in the draft Order and has set out how they meet the statutory tests of proportionality, desirability and fair balance.[118] The Department's analysis is assessed below.

184. The Department states that it is "self-evident" that the draft Order, in its substantive provisions, would create burdens which would affect persons in the carrying on of their activities. In particular the Department identifies part 2 of the draft Order (articles 8 to 24) and articles 29, 30, 31, 37 and 38 as provisions which apply to the responsible person in control of premises.

116 Explanatory statement, para 333

117 Appendix B, para 27

118 Explanatory statement, paras 334–359

185. We address the Department's analysis of the principal new burdens below. We do not intend to analyse each new burden in detail: where we have not provided a full analysis of a new burden, it is listed at paragraph 211, together with a reference to where the Department's explanation is to be found in the explanatory statement. There are two instances where the Department failed to provide a sufficient explanation of the new burden to be imposed, but has subsequently done so in response to our questions.

Duties on employers and other responsible persons

186. Articles 8 to 22 of the draft Order impose duties on the responsible person in relation to fire safety, and article 24 provides for the Secretary of State to make regulations about fire precautions, which may also impose a duty on the responsible person. The principal burden on the responsible person is to ensure that any duty imposed by the above provisions ("the duty") is complied with in respect of the premises concerned.

187. Article 5 of the draft Order deals with the responsibilities of the "responsible person" as defined in article 3. Where the premises are a workplace, the responsible person (i.e. the employer) must ensure that the duty is complied with in respect of the premises. Where the premises are not a workplace, the responsible person must ensure that the duty is complied with so far as the requirements of the Order relate to matters within his control,[119] and any other person who has control of the premises must also ensure that the duty is complied with insofar as the duty relates to matters within his control.[120] This provision also extends to any person who has an obligation in relation to the maintenance, repair or safety of any premises.[121] Article 22 of the draft Order ensures that where premises are shared between two or more responsible persons, those persons shall co-operate in making provision for fire safety and co-ordinate their activities.

188. The Department notes that the duties imposed on employers are stricter than those imposed on other responsible persons, since they are required to ensure that fire safety duties are complied with throughout the workplace, whether or not the requirements relate to matters within their control. It states that this reflects the "high standard expected of employers" in existing domestic and European health and safety legislation.

189. The Department considers that the burden imposed by article 5, insofar as it independently imposes a burden, is proportionate to the benefit which results from its creation. It has provided no reasoning to support its contention, and does not explain the benefit in terms. **Nevertheless we consider that the burden which is imposed, placing duties on persons responsible for fire safety in premises, is proportionate to the resultant benefit, insofar as the individual requirements with which article 5 requires compliance are proportionate.**

Duty to take general fire precautions

190. Article 8 imposes a general duty on the responsible person to take general fire precautions. Where the responsible person is an employer, he must ensure the safety of his

119 Article 5(2) of the draft Order

120 Article 5(3)

121 Article 5(4)

employees, so far as is reasonably practicable.[122] Where the responsible person is not an employer, he must take such general fire precautions in relation to "relevant persons" as reasonably may be required in the circumstances to ensure that the premises are safe.[123] A "relevant person" is defined throughout the draft Order as any person who is or may be lawfully on the premises, and any person in the immediate vicinity of the premises who is at risk from a fire on the premises, but not including a firefighter in pursuit of his firefighting duties.[124]

191. The Department notes that this duty is, in its formulation, similar to the duty imposed by section 2 of the Health and Safety at Work etc. Act 1974. The term "so far as is reasonably practicable" has a history in case law, and has been considered by the Court of Appeal.[125] The Department states that his principle has been consistently applied by the courts in subsequent judicial decisions.

192. Article 8(b) of the draft Order imposes a less onerous duty on the responsible person in respect of fire protection for persons who are not his employees. The Department states that this reflects the nature of the duty imposed on those persons who hold fire certificates under the 1971 Act and those who are exempt from holding such certificates.[126] Article 33 provides for a "due diligence" defence in respect of proceedings taken against a responsible person for breach of the statutory duty under article 8(b): the person charged with an offence under article 8(b) is entitled to claim in his defence that he took all reasonable precautions and exercised all due diligence to avoid committing an offence. This "due diligence" defence is not available to responsible persons who are employers in respect of those employees.

Enforcement notices

193. Article 30 of the draft Order makes provision for an enforcing authority to issue an enforcement notice if the authority is of the opinion that the responsible person has failed to comply with an obligation under the Order. This provision constitutes a new burden on the responsible person, and also creates a burden on the enforcing authority.

194. In the explanatory statement, the Department had failed to set out a description of the new burden and its assessment as to whether it was proportionate to the benefit conferred. We therefore asked the Department to supply an analysis of the burden and how it met the proportionality test.

195. The Department has now provided a full analysis of the new burden and has explained how it meets the proportionality test. In brief, the Department considers that service of an enforcement notice would be proportionate, since its purpose would be to ensure that the fire safety duties contained in the draft Order were complied with.[127] The

122 Article 8(a) of the draft Order. In the draft Order, "safety" is defined as "safety of persons in the event of fire": see paragraph 173 above.

123 Article 8(b)

124 Article 2 of the draft Order: see paragraph 17 above.

125 *Edwards v NCB* [1949] 1 All ER 743

126 Fire Precautions Act 1971, sections 5A(3) and 9A(1)

127 Appendix B, para 32

only action required by the responsible person in receipt of an enforcement notice would be the necessary action to remedy the failure to comply with the Order. The Department argues that the nature of the burden would be determined by the nature of the contravention. The Department further considers that the small burden on the enforcing authority in serving the notice is entirely proportionate to the benefit conferred on the responsible person, that is, of knowing the breach of the provisions of the draft Order of which he is alleged.

196. **We are satisfied by the Department's analysis, and consider that the new burden is proportionate**.

Prohibition notices

197. Article 31 makes provision for the enforcing authority to serve a prohibition notice on premises to prohibit or restrict their use. Although the purpose of article 31 was described in general in the explanatory statement, the Department did not appear to have set out in detail what it considered were the burdens imposed by the provision, and whether those burdens were proportionate to the benefit conferred.

198. We therefore asked the Department to supply an analysis of the burden and how it met the proportionality test. The Department has now indicated the burdens which article 31 places upon the responsible person and on enforcing authorities.[128] Although it considers that the burdens of prohibition of use of premises are onerous on responsible persons, it considers that these are justified by the very high level of protection available to relevant persons. It also notes the high threshold which an enforcing authority has to cross before issuing a notice, and stresses that the authority is required to act reasonably and to give its reasons for serving a prohibition notice.

199. **We are satisfied that the new burden created here is proportionate to the benefit which is expected to result from its creation.**

Reverse burden of proof

200. Article 34 of the draft Order reverses the burden of proof in cases which rely on the determination of what is "reasonably practicable". Where a person is accused of a failure to comply with a duty or requirement of the Order "so far as is reasonably practicable", the burden of proof is on the accused to demonstrate that it was not reasonably practicable to do more than was in fact done to satisfy the requirements of the law, rather than for the prosecution to prove otherwise. The Department states that this provision reflects a provision in existing health and safety law (Section 40 of the Health and Safety at Work etc. Act 1974) which was tested against the European Convention on Human Rights by the Court of Appeal in 2002.[129] It considers that the courts would take a similar line in relation to article 34 of the draft Order.

128 Appendix B, para 36

129 *R v Davies* [2002] All ER (D) (Dec)

Proportionality

201. The Department considers that the burden imposed on the responsible person by article 8 is proportionate to the benefit conferred, although, again, this benefit is not defined. The burdens on responsible persons who are not employers in relation to employees has been reduced by the inclusion of a test of reasonableness in article 8(b) of the draft order and by the due diligence defence in article 33, which the Department considers a re-enactment of the provisions in the existing legislation.[130]

202. The burdens imposed are as a result of the re-enactment of some existing legislation, and have the object of securing general fire safety. **We consider that they are proportionate to the benefit which results from their creation.**

Provision for the safety of relevant persons

203. The Department has analysed the burdens imposed by articles 9 to 22 of the draft Order in terms of the specific requirements placed on the responsible person to take appropriate actions to ensure the safety of relevant persons from fire. The definition of "relevant person" is given at paragraph 18 above. The specific requirements are:

a) a duty to carry out a risk assessment of the premises (article 9);

b) a duty to implement preventive and protective measures on the basis of the specification in part 3 of Schedule 1 to the draft Order (article 10);

c) a duty to make effective planning, organisation, control, monitoring and review arrangements for the preventive and protective measures implemented (article 11)

d) a duty to ensure that fire risks to persons from dangerous substances on the premises are reduced or eliminated (article 12);

e) a duty to ensure that, so far as it is appropriate, the premises are equipped with firefighting equipment, fire detectors and alarms (article 13);

f) a duty to ensure that emergency routes and exits are kept clear at all times (article 14);

g) a duty to institute fire drills and to keep persons out of hazardous areas unless they have received adequate safety training (article 15);

h) a duty to provide suitable information on emergency arrangements, suitable warning systems and escape routes in cases where dangerous substances are involved (article 16);

i) a duty to maintain any facilities, equipment or devices provided on the premises to ensure fire safety (article 17);

j) a duty to appoint one or more "competent persons" (i.e. persons with "sufficient training and experience or knowledge and other qualities") to assist in undertaking preventive and protective measures (article 18);

130 Section 25 of the Fire Precautions Act 1971 and regulations 11 and 15 of the Fire Precautions (Workplace) Regulations 1997.

k) a duty to provide comprehensible and relevant fire safety information to employees on the fire risks on the premises, the preventive and protective measures taken, the fire drills established, the persons appointed to assist in fire safety measures on the premises and the risks arising from parts of the premises which the responsible person does not control (article 19);

l) a duty to provide comprehensible and relevant information on fire risks and preventive and protective measures to employers of any employees from outside undertakings working on the premises, and to self-employed persons working on the premises (article 20);

m) a duty to provide adequate safety training, to take place during working hours and to be repeated periodically (article 21), and

n) a duty to co-operate and co-ordinate on fire safety matters with other responsible persons occupying part of the same premises (article 22).

204. The Department explains that these provisions re-enact, in a "substantively unmodified form", the existing obligations on employers contained in existing secondary legislation, which the draft Order would repeal.[131] These existing obligations are to be extended to responsible persons in control of premises who are not employers, and the protections they contain are to be extended to all relevant persons on premises (whether or not they are employees). While these provisions of the draft Order re-enact existing burdens on employers, they create new burdens on other responsible persons.

205. Article 32(1) makes failure to comply with the duties under articles 9 to 21 an offence insofar as persons are put at risk of death or serious injury as a result of such non-compliance. The Department indicates that the maximum penalty for the offence on conviction would, if tried in a magistrates' court, be a fine not exceeding the statutory maximum (presently £5000), or, where the case is tried on indictment in the Crown Court, either an unlimited fine or imprisonment for up to two years, or both.[132]

Proportionality

206. The Department considers that the burdens imposed by articles 9 to 22 are proportionate to the benefits conferred, for the following reasons:

— article 5(5) of the draft Order requires the taking or observance of fire precautions stipulated in articles 8 to 22, and any regulations under article 24, only in respect of relevant persons;

— article 33 provides a general defence of due diligence; and

— individual articles are worded to ensure that the responsible person is required only to take precautions necessary to ensure the safety of relevant persons.

131 The Fire Precautions (Workplace) Regulations 1997 (S.I. 1997/1840, amended by S.I. 1997/1877) , the Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242) and the Dangerous Substances and Explosive Atmospheres Regulations 2002 (S.I. 2002/2776)

132 Explanatory statement, para 321, footnote 72

We consider that the burdens of compliance are proportionate to the benefit to be secured by the draft Order, namely the safety of relevant persons from fire.

207. The due diligence defence in article 33 is disapplied in respect of offences under articles 8(a) (duty to take general fire precautions) and 12 (elimination or reduction of risks from dangerous substances) of the draft Order. In these cases the responsible person is required to comply with the duties prescribed "so far as is reasonably practicable". The Department considers that, since article 12 re-enacts a duty in existing legislation,[133] the burden is proportionate to the benefit. The Department explains that the wording of article 12 is justifiable on the same grounds as that for article 8(a) (considered at paragraph 200 above).

Duty of employees at work

208. Article 23 places a general duty on every employee to take reasonable care of himself, and of other relevant persons who may be affected by his acts or omissions while at work; to co-operate with his employer to enable any duty or requirement imposed under the draft Order to be carried out, and to report any fire safety dangers or shortcomings in fire protection arrangements to his employer or the designated workplace fire safety officer.

209. The Department notes that the requirement is very similar to the duty contained in section 7 of the Health and Safety at Work etc. Act 1974. It explains that the provision is repeated in the draft Order to ensure that the existing duty continues to apply to employees in respect of fire safety, and to enable it to be enforced by the relevant and appropriate enforcing authority for fire safety.

Proportionality

210. The Department considers that the burdens on employees are necessary "in order to protect themselves as well as fellow-workers".[134] It states that the duties imposed, to take reasonable care, to co-operate with fire safety duties and to inform employers of dangerous situations are proportionate. **We agree**.

Further provisions of the draft Order

211. The Department has provided an assessment of each of the provisions of the draft Order against the proportionality test as follows:

— Article 24: provision for the Secretary of State to make regulations about fire precautions (para 342);

— Article 26: a requirement on the enforcing authority to enforce the Order and to have regard to guidance issued by the Secretary of State (para 343);

— Article 27: provision of powers to inspectors to enable effective enforcement of the Order (para 344);

133 A provision of the Dangerous Substances and Explosive Atmospheres Regulations 2002 (S.I. 2002/2776)

134 Explanatory statement, para 341

— Article 29: provision for an enforcement authority to serve alterations notices on the person responsible for a premises (para 345);

— Article 30: provision for enforcement notices (para 346);

— Article 32: provision for the creation of offences for failure to comply with the requirements and prohibitions made under the draft Order and regulations (paragraphs 347–349);

— Article 38: provision for measures which must be taken to ensure the safety of firefighters (para 350);

— Articles 42 and 46: requirements imposed on licensing authorities, enforcing authorities and others (including building inspectors) for co-operation (para 351)

— Article 49: application of certain provisions of the draft Order to the Crown, and application to Parliament.

212. We consider that the Department has demonstrated that each of these burdens, as expressed in the draft Order, meets the proportionality test.

"Fair balance" test

213. **We consider that the provisions of the order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created**.

l. Desirability

214. The Department has stated that "the reduction in the burdens on persons and the other beneficial effects set out above generally make it desirable that the draft Order be made."[135] **We concur with this assessment insofar as it relates to the reduction or removal of existing burdens and the imposition of new burdens**.

135 Explanatory statement, para 359

m. Costs and benefits

215. A regulatory impact assessment (RIA) has been prepared and is attached to the explanatory statement at annex D.

216. We are required to report to the House whether the proposal has been the subject of, and taken appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation.[136] We considered that our responsibilities in this respect would be best discharged by an examination of the assumptions which lay behind the regulatory impact assessment. We therefore asked the Department a number of questions on the assumptions it had made, to gauge the rigour of the analysis behind the cost-benefit analysis provided in the RIA. Our questions are set out in Appendix C (questions 25 to 45), and the Department's answers to them are set out in appendix D.

217. In our initial analysis of the assessment, we were greatly assisted by Andrea Keenoy of the National Audit Office, presently on secondment to the Committee Office Scrutiny Unit. We are very grateful to her for the incisive analysis of the RIA she was able to provide, which formed the basis for our questioning.

218. We are on the whole content with the basis on which the Department has prepared the RIA. We note that in some instances the source of the figures in the assessment is not firm. In these circumstances, however, the Department states that it has arrived at the figures in consultation with the Fire Service or the Small Business Service.[137] It has therefore sought to include relevant stakeholders in the discussion of the likely impact of the proposal. We note that the most cautious of estimates have been used in the calculation of the overall net position.

219. Our one substantive concern centres upon the table of quantifiable economic benefits which is set out in the RIA.[138] We note that the initial one-off or set-up costs (for instance, costs of training, purchase of the guidance and advertising costs) have not been included in the table, and the picture it presents is therefore incomplete. Once these costs are added in, businesses may find they suffer a net economic loss in the first year of the Order's operation, and could take several years before they break even. Our concern is that this may adversely affect the level of business compliance with the Order's provisions, and hence its chance of success.

220. **We are satisfied that the proposal has been the subject of, and taken appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation.**

136 S.O. No. 141(6)(m)

137 See, for example, Appendix D, Q 34

138 Explanatory statement, annex D, para 17

n. Subordinate provisions

221. The Department proposes to designate articles 9 to 22 of the proposed order as subordinate provisions, amendable by subordinate provisions order subject to negative resolution: it explains that this designation is required in the event that it should it be necessary to amend the Order to take account of amendments to European legislation. It points out that article 5(5) of the draft Order indicates that "articles 8 to 22 . . . only require the taking or observance of general fire precautions in respect of relevant persons", thereby placing a limit on the extent to which articles 9 to 22 may be amended.

222. The Department further notes that the EU obligations which in effect govern articles 9 to 22 act as an external control, arguing that any changes to articles 9 to 22 would in practice be prompted by changes to the relevant EU directives.

223. Notwithstanding the Department's arguments for ensuring compatibility with EU legislation, we consider that the power which the Department is claiming for the amendment of the law is a broad one. The provisions affected are the core fire safety duties of the draft Order. The Department argues that any amendment to these provisions will be limited by the scope of the relevant EU directive. That may be so as regards protection for workers. But there remains scope for the Government to seek to alter the protections for others and, as respects workers, to amend the provisions in ways which may not fully implement a revised directive or which may implement it inappropriately.

224. Given the breadth and the nature of the provisions which the Government proposes to amend by means of subordinate provisions order, we therefore consider that any proposed amendment to articles 9 to 22 ought to be by means of subordinate provisions order subject to affirmative resolution.

225. The Department also wishes to designate article 45 as a subordinate provision subject to amendment by negative resolution. Its aim in doing this is apparently to enable moving the requirements on consultation into Building Regulations when they are next revised: article 45 would then be revoked. We note the Department's intentions in this regard. But we consider this provision to be important and amendment to it (including its removal) ought to be subject to a high level of scrutiny.

226. **We recommend that article 51 of the draft Order be amended to designate articles 9 to 22 and 45 as subordinate provisions amendable by subordinate provisions order subject to affirmative resolution.**

227. Article 25 (definition of enforcing authorities) and Schedule 1 (determination of matters to be taken into account in the implementation of articles 9(2), 9(5), 10 and 12) are also to be designated as subordinate provisions, amendable by subordinate provisions order subject to negative resolution. **We consider that this designation is appropriate**.

7 Matters raised under S.O. 141(5)

Handling of the proposal[139]

228. As we have commented above, this is the largest and most complex proposal for a regulatory reform order to be introduced under the 2001 Act. It has been introduced while the Fire and Rescue Services Bill has been completing its passage through Parliament, and there are elements of the proposal which was originally consulted upon which are now due to be enacted by means of that Bill rather than by means of the proposed Order.[140]

229. The reforms of fire safety legislation have therefore followed a twin legislative track. The Minister told us that a conscious decision was taken not to combine the two measures, since the Government's policy was to use the regulatory reform procedure to make reforms wherever appropriate, whether or not primary legislation was in prospect: the benefit was "to reduce the burden of unnecessary bureaucracy, to do things as quickly as possible . . . consistently with maintaining the necessary protections and of course to reduce pressure on Parliamentary business."[141] He considered that the result of the regulatory reform order process was a "thoroughgoing exercise" which complemented the passage of the Bill and would result in a "comprehensive, well supported Order":[142] "we have managed to combine through the Bill and the Regulatory Reform Order a lot more than we would have achieved by simply doing it through the Bill alone."[143]

230. This is the third proposal for a Regulatory Reform Order we have considered this Session which has had a direct relation to primary legislation going through Parliament.[144] While we reserve judgment on the principle of splitting legislative proposals into bills and regulatory reform orders, we consider that the strategy adopted by the Department in this instance has not created any difficulties for our handling of the proposal.

231. We have also been greatly assisted by the readiness of the Department to co-operate in its swift and full responses to our requests for information. The Department's positive approach to the scrutiny process we have undertaken is welcome. We trust that it will result in a better draft Order.

139 Under Standing Order No. 141(5), the Committee may report to the House on any matter arising from its consideration of the proposal.

140 The Government's proposals in respect of fire inspection and the introduction of a duty of community fire safety: explanatory statement, para 42.

141 Q 85

142 Q 88

143 Q 90

144 The other two instances have been the proposals for the Regulatory Reform (Patents) Order 2004 and the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004, which were related to the Patents Bill [*Lords*] and the Public Audit (Wales) Bill [*Lords*] respectively.

Guidance to users and business

232. We asked Mr Tony Taig, a risk assessment specialist, whether there were any weak points in the fire safety regime which the proposed Order would establish. He told us that "the obvious one is that at the moment we do not know where the goalposts are."[145]

> You cannot leave it to a million premises and their duty holders and however many thousands of fire inspectors that there are to make their own judgments as to what is a suitable level of risk or what is a suitable set of precautions for facing a different risk. You must have guidance on that.

Mr Taig considered that the draft Order required a set of guidance documents to spell out to responsible persons what were the benchmarks which people in different circumstances were expected to be able to meet. The goal-based regime of the proposed Order was similar to that implemented by the Health and Safety at Work etc. Act 1974, where the efficient operation of the risk assessment regime relied on "having well laid out codes of practice and guidance that explain to people what is good practice for different circumstances."[146] He did not think that the draft Order should come into force before guidance was put in place.[147]

233. We consider that guidance is essential to the proper implementation of the Order. In the absence of a routine fire safety inspection and the judgment of the inspecting officer, the onus for determining the appropriate level of fire precaution provision will fall on the responsible person. It is vital that the responsible person is able to have access to a clear and authoritative source of advice which will tell him how he ought to implement fire safety provisions in such a way that he is able to safeguard his premises from fire, protect responsible persons from the effects of fire and comply with the requirements of the law.

234. The Department has said that if the draft Order is approved, it intends to issue guidance to the public on its requirements. It envisages the production of eleven separate sets of guidance, each directed at specific types of premises.[148] Each guidance book would cost £12, but would be available for free on the Internet. The Minister told us that the guidance would provide much of what was necessary for individuals and organisations to assist them in implementing the provisions of the draft Order, including an explanation of risk assessment and practical guidance on fire prevention and precautions.[149] He stated that the guidance would be accompanied by information leaflets which would explain the law and publicise the Department's intentions.

235. The Department has sent us an early draft of the first guidance book it is intended to produce, a guide to fire safety in offices and shops. The guide is in two parts: an introduction to fire risk assessments (29 pages, containing 14 checklists), and a further section (45 pages) providing more detailed guidance on risk assessment procedures.

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145 Q 73

146 Q 80

147 Q 81

148 Explanatory statement, para 384

149 Q 120

236. We are not in a position to provide a comprehensive appraisal of the draft guidance book produced by the Department. We nevertheless note that it is a sizeable document which is likely to prove quite daunting for a small business trying to implement fire safety measures in, for example, a corner shop. The Minister stated that he intended the book to be appropriately sized, so that individuals were encouraged to read it rather than to put it to one side.[150] In our view the guidance book which we have been shown in draft is of a type which might well daunt a small business unless its staff were provided with a simpler and more accessible guide to the law and to their obligations under it.

237. We were heartened to hear that the Chief Fire Officers' Association was drafting a short four-page guidance document targeted at small businesses which it intended to submit to the Department for its approval.[151] CFOA appeared to consider that small businesses would not need "a 120-page guidance document".[152] **We consider that standard entry-level guidance to fire safety responsibilities ought to be made available to complement the detailed guidance books which are being drafted. Such initial guidance should of course be drafted in plain English, and should be user-friendly and accessible.**

238. We have already noted that a separate system of guidance is required on the interpretation of some aspects of the proposal. We consider that the necessary protection envisaged in articles 13 and 14 cannot be maintained unless guidance is given to responsible persons on what "where necessary" may mean, and to enforcement authorities as to how they should perform their duties effectively under the Order.[153] This guidance clearly needs to be mainstreamed throughout the guides which the Department proposes to produce.

239. We are surprised that there is no provision in the draft Order for the issue of guidance on its implementation. The only provision for guidance is in article 26, which requires enforcing authorities to have regard to "such guidance as the Secretary of State may give" them. We find it odd that the Department does not propose to make statutory provision requiring the issue of guidance. Such provision would arguably enhance the status of any guidance and would reinforce its importance to the regime which the proposed Order would bring in.

240. We consider that there is merit in making statutory provision for the issue of guidance. A statutory requirement, placing the Secretary of State under a duty to issue appropriate guidance on the interpretation of the proposal's provisions and their application, would underpin the importance of guidance in ensuring the effective and consistent application of fire safety provisions across the range of premises. **We recommend that the Department amend the draft Order to place a statutory requirement on the Secretary of State to issue guidance on its implementation and interpretation.**

150 Q 123

151 Q 34

152 The draft guidance book produced by the Department has 114 pages.

153 See above, para 77

8 Conclusion

241. **We consider that the proposal should be amended in the manner set out in paragraphs 82, 88, 104, 119, 127, 169, 170, 174 and 226 above before a draft order is laid before the House.**

Annex 1

Primary legislation amended or repealed by the draft Order

	Title of Act	Where amended or repealed in draft Order*	Explanatory statement reference (paragraph)
General Acts	Celluloid and Cinematograph Film Act 1922	Sch 2, para 53 (1)	64 (consequential)
	Fire Services Act 1947	Sch 2, para 55 (3)	64 (consequential)
	Pet Animals Act 1951	Sch 2, para 56 (4)	75–76
	Caravan Sites and Control of Development Act 1960	Sch 2, para 58 (6)	84–86
	Public Health Act 1961	Sch 2, para 59 (7)	87–89
	Gaming Act 1968	Sch 2, para 60 (8)	90–92
	Fire Precautions Act 1971	Sch 2, para 61 (9)	93–116
	Health and Safety at Work etc Act 1974	Sch 2, para 62 (10)	117–119
	Safety of Sports Grounds Act 1975	Sch 2, para 63 (11)	120–123
	Rent Act 1977	Sch 2, para 66 (14)	64 (consequential)
	Local Government, Planning and Land Act 1980	Sch 4	135–136
	Zoo Licensing Act 1981	Sch 2, para 74 (22)	64 (consequential)
	Local Government (Miscellaneous Provisions) Act 1982	Sch 2, para 79 (27)	217–223
	Food Act 1984	Sch 2, para 85 (33)	64 (consequential)
	Building Act 1984	Sch 2, para 86 (34)	245–253
	Housing Act 1985	Sch 2, para 89 (37)	64 (consequential)
	Fire Safety and Safety of Places of Sport Act 1987	Sch 2, para 96 (44)	293–295
	Environment and Safety Information Act 1988	Sch 2, para100 (48)	309–310
	National Health Service and Community Care Act 1990	Sch 4	64 (consequential)
	Smoke Detectors Act 1991	Sch 2, para 49 (101)	311–314
	Capital Allowances Act 2001	Sch 2, para 103 (51)	64 (consequential)

Local Acts	London Building Acts (Amendment) Act 1939	Sch 2, para 54 (2)	66–74
	East Ham Corporation Act 1957	Sch 2, para 57 (5)	77–83
	Greater London Council (General Powers) Act 1975	Sch 2, para 64 (12)	124–126
	County of South Glamorgan Act 1976	Sch 2, para 65 (13)	127–134
	County of Merseyside Act 1980	Sch 2, para 67 (15)	137–147
	West Midlands County Council Act 1980	Sch 2, para 68 (16)	148–154
	Cheshire County Council Act 1980	Sch 2, para 69 (17)	155–164
	West Yorkshire Act 1980	Sch 2, para 70 (18)	165–170
	Isle of Wight Act 1980	Sch 2, para 71 (19)	171–175
	South Yorkshire Act 1980	Sch 2, para 72 (20)	176–184
	Tyne and Wear Act 1980	Sch 2, para 73 (21)	185–188
	Greater Manchester Act 1981	Sch 2, para 75 (23)	189–197
	County of Kent Act 1981	Sch 2, para 76 (24)	198–202
	Derbyshire Act 1981	Sch 2, para 77 (25)	203–210
	East Sussex Act 1981	Sch 2, para 78 (26)	211–216
	Humberside Act 1982	Sch 2, para 80 (28)	224–228
	County of Avon Act 1982	Sch 2, para 81 (29)	229–231
	Cumbria Act 1982	Sch 2, para 82 (30)	232–237
	Hampshire Act 1983	Sch 2, para 83 (31)	238–240
	Staffordshire Act 1983	Sch 2, para 84 (32)	241–244
	County of Lancashire Act 1984	Sch 2, para 87 (35)	254–257
	Cornwall County Council Act 1984	Sch 2, para 88 (36)	258–260
	Bournemouth Borough Council Act 1985	Sch 2, para 90 (38)	64 (consequential)
	Leicestershire Act 1985	Sch 2, para 91 (39)	261–267
	Clwyd County Council Act 1985	Sch 2, para 92 (40)	268–273
	Worcester City Council Act 1985	Sch 2, para 93 (41)	274–278
	Poole Borough Council Act 1986	Sch 2, para 94 (42)	279–284
	Berkshire Act 1986	Sch 2, para 95 (43)	285–292
	Plymouth City Council Act 1987	Sch 2, para 97 (45)	296–298
	West Glamorgan Act 1987	Sch 2, para 98 (46)	299–302
	Dyfed Act 1987	Sch 2, para 99 (47)	303–308
	London Local Authorities Act 1995	Sch 2, para 102 (50)	309–310

*—The paragraphs in Schedule 2 to the proposed Order as laid before Parliament are incorrectly numbered. The figure in brackets is the paragraph number as it would appear if the first paragraph in Schedule 2 were numbered 1.

Annex 2

Subordinate legislation amended or revoked by the draft Order

Title of instrument	Where amended or revoked in draft Order
Fire Certificate (Special Premises) Regulations 1976 (S.I. 1976/2003)	Sch 5
Dangerous Substances in Harbour Regulations 1987 (S.I. 1987/37)	Sch 3, para 1
Safety of Sports Grounds Regulations 1987 (S.I. 1987/1941)	Sch 3, para 2
Safety of Places of Sport Regulations 1988 (S.I. 1988/1807)	Sch 3, para 3
Fire Precautions (Sub-surface Railway Stations) Regulations 1989 (S.I. 1989/1401)	Sch 5
Fire Precautions (Sub-surface Railway Stations) (Amendment) Regulations 1991 (S.I. 1991/259)	Sch 5
Fire Precautions (Sub-surface Railway Stations) (Amendment) Regulations 1994 (S.I. 1994/2184)	Sch 5
Marriages (Approved Places) Regulations 1995 (S.I. 1995/510)	Sch 3, para 4
Construction (Health, Safety and Welfare) Regulations 1996 (S.I. 1996/1592)	Sch 3, para 5
Housing (Fire Safety in Houses in Multiple Occupation) Order 1997 (S.I. 1997/230)	Sch 3, para 6
Health and Safety (Enforcing Regulations) 1998 (S.I. 1998/494)	Sch 3, para 7
Fire Precautions (Workplace) Regulations 1997 (S.I. 1997/1840)	Sch 5
Fire Precautions (Workplace) (Amendment) Regulations 1999 (S.I. 1999/1877)	Sch 5
Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242)	Sch 5
Building Regulations 2000 (S.I. 2000/2531)	Sch 3, para 8
Building (Approved Inspectors etc.) Regulations 2000 (S.I. 2000/2532)	Sch 3, para 9
Care Homes Regulations 2001 (S.I. 2001/3965)	Sch 3, para 10
Children's Homes Regulations 2001 (S.I. 2001/3967)	Sch 3, para 11
Private and Voluntary Care Regulations 2001 (S.I. 2001/3968)	Sch 3, para 12
Care Homes (Wales) Regulations 2002 (S.I. 2002/324)	Sch 3, para 13
Private and Voluntary Care (Wales) Regulations 2002 (S.I. 2002/325)	Sch 3, para 14
Children's Homes (Wales) Regulations 2002 (S.I. 2002/327)	Sch 3, para 15

Child Minding and Day Care (Wales) Regulations 2002 (S.I. 2002/812)	Sch 3, para 16
Residential Family Centres Regulations 2002 (S.I. 2002/3213)	Sch 3, para 17
Residential Family Centres (Wales) Regulations 2003 (S.I. 2003/781)	Sch 3, para 18

Annex 3

Provisions of primary legislation not presently in force to be repealed

Fire Precautions Act 1971	Section 3 Section 4 Section 12(11) Section 16(1)(b) Section 16(2)(b) Section 18(1) (the prospective insertion of "and cause premises to be inspected" made by the Fire Safety and Safety of Places of Sport Act 1987) Section 18(3)
Smoke Detectors Act 1991	The whole Act

Formal minutes

Tuesday 13 July 2004

Members present:
Mr Peter Pike, in the Chair

Brian Cotter	Dr Doug Naysmith
Mr John MacDougall	Brian White
Mr Denis Murphy	

The Committee deliberated.

[Adjourned till Tuesday 20 July at 9.30 am.

Tuesday 20 July 2004

Members present:
Mr Peter Pike, in the Chair

Brian Cotter	Mr Denis Murphy
Mr John MacDougall	Dr Doug Naysmith
Chris Mole	Brian White

The Committee deliberated.

Draft Report [Proposal for the Regulatory Reform (Fire Safety) Order 2004], proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 241 read and agreed to.

Annexes 1 to 3 agreed to.

Summary agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House.

[Adjourned till Tuesday 14 September at 9.30 am.

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Mr Glyn Evans, Fire Safety Advisor Ev 4

Chief Fire Officers' Association

DCFO Andy Marles, Deputy Chief Fire Officer, South Wales Fire and Rescue Service, and **SDO Nigel Charlston**, Senior Fire Safety Officer, West Yorkshire Fire and Rescue Service Ev 11

Professor Rosemarie Everton, Professor of Fire Law, Department of Built Environment, University of Central Lancashire Ev 16

Tuesday 29 June 2004

TTAC Limited

Mr Tony Taig Ev 20

Office of the Deputy Prime Minister

Phil Hope MP, Parliamentary Under-Secretary of State, and **Mr Andy Jack**, Head of Fire Safety Legislation Branch Ev 25

Appendix A

Letter from the Clerk of the Committee to the Office of the Deputy Prime Minister

Proposal for the Regulatory Reform (Fire Safety) Order 2004: request for further information

Thank you for your appearance before the Committee on Tuesday, and for the extremely helpful presentation which you gave on the proposal.

The Committee considered the proposal at its subsequent meeting and resolved to seek further information from the Department. The issues which concern the Committee are set out below, together with questions arising from them, under the relevant categories for consideration set out in the Committee's Standing Order.

I should note that the Committee will be considering further aspects of the proposal at a subsequent meeting, and I may therefore write again with additional questions which the Committee wishes to raise.

Whether the proposal continues any necessary protection (S.O. No. 141(6)(c))

1. Section 12 of the Fire Precautions Act 1971 gives power to the Secretary of State to make regulations. Section 12(4)(c) provides that the regulations may make contravention of specified provisions of them an offence. This provision does not appear in article 24 of the draft Order, which otherwise substantively re-enacts the provisions of section 12, and is not superseded by article 32(1)(b). Article 32(1)(b) instead provides that failure to comply with any requirement or prohibition imposed by regulations is an offence where it places one or more relevant persons at risk of death or serious injury in case of fire.

Q 1 Please explain why the draft Order does not continue the effect of section 12(4)(c) of the Fire Precautions Act 1971, but instead provides that contravention of specified provisions shall be an offence only where it places a relevant person at risk of death or serious injury.

2. Section 28 of the 1971 Act allows the court to modify agreements and leases, and apportion expenses, where a person is required to carry out alterations to premises by virtue of a requirement imposed under the 1971 Act but is prevented from doing so by reason of the terms and conditions of an agreement or lease. The draft Order does not appear to include a corresponding provision. Particularly relevant would be cases where a notice is served under article 29, 30 or 31 or a requirement is imposed by regulations under article 24. This might be considered a necessary protection for a tenant who cannot otherwise make alterations to premises necessary to comply with fire safety requirements under the draft Order.

Q 2 Please explain whether the provisions of section 28 of the Fire Precautions Act 1971 are considered necessary protections; if so, how they are to be maintained in the draft Order; and if not, why not.

3. The Department describes the repeal of section 140 of and Schedule 20 to the Rent Act 1977 as "purely consequential or incidental". The Committee notes that paragraph 1 of that Schedule provides that expenditure incurred by a landlord in carrying out work required by a notice under the Fire Precautions Act 1971 Act may be treated as expenditure on improving the premises, and will be taken into account in determining the rent which he is entitled to charge under a regulated tenancy. Paragraph 3 of that Schedule is also material to the rent that may be charged under a regulated tenancy where an order has been made under section 28 of the 1971 Act. The draft Order does not appear to make equivalent provision.

Q 3 Please indicate whether it is intended that the effect of paragraphs 1 and 3 of Schedule 20 to the Rent Act 1977 should be achieved in the draft Order; if so, how the effect is achieved, and if not, why not.

4. Paragraph "86(4)" of Schedule 2 to the draft Order would repeal section 71 of the Building Act 1984. This provides that where a local authority considers that a building is not provided with sufficient entrances, exits, passages or gangways it must serve a notice requiring the owner of the property to carry out the required works and to make the necessary provisions.

5. The Committee recognises that the provision has a clear application and purpose in terms of fire safety. It notes the Department's statement that this protection is adequately maintained by the specific provisions of article 14 of the draft Order, which places a duty on the person responsible for premises to arrange for adequate emergency routes and exits.

6. The Committee considers that section 71 of the Building Act may have a wider purpose than that of achieving general fire safety. If that is so, then its repeal and replacement by a provision specifically geared to fire safety protection might remove other forms of protection.

Q 4 Please explain whether section 71 of the Building Act 1984 is specifically related to fire safety, or whether it has an application which is not related to fire safety.

Q 5 If the latter, please indicate how the protections not related to fire safety are to be maintained after the repeal of section 71.

Whether the proposal requires elucidation, is not written in plain English or appears to be defectively drafted (S.O. No. 141(6)(h))

Definition of premises (article 2 of the draft Order)

7. The Department states that insofar as houses in multiple occupation (HMOs) "have common parts or may be used as a place of work" the draft Order applies to them. The definition of "domestic premises" given in article 2(1) excludes external common parts of premises, so the draft Order applies to the external common parts of HMOs. The Committee is not certain how the draft Order is to be applied to internal common parts of premises, such as halls, stairways or landings.

Q 6 Please explain how the draft Order is intended to extend to the internal common parts of houses in multiple occupation, given that the definition of "domestic premises" in article 2 of the draft Order appears not to exclude such internal common parts.

Application to premises (article 6)

8. The Committee considers that the meaning and effect of article 6(1)(c), disapplying the Order from ships in respect of certain activities, is unclear. The derivation of the article from existing legislation also appears obscure.

Q 7 Please explain the intended meaning and effect of the provision contained in article 6(1)(c) of the proposed Order.

Q 8 Please indicate whether the provision is to be found in existing fire safety or health and safety legislation; and, if so, where.

Disapplication of certain provisions (article 7)

9. The Committee is unclear as to the scope of "occasional work" and "short-term work" contained in article 7(1). The Committee is also unclear as to the meaning of "work regulated as not being harmful, dangerous or damaging to young people in a family undertaking".

Q 9 Please indicate what is the intended effect of article 7(1).

Q 10 Please explain how the terms "occasional work" and "short-term work" are to be defined.

Q 11 Please explain what is meant by "work regulated as not being harmful, damaging or dangerous to young people in a family undertaking."

Alterations notices (article 29)

10. Article 29 provides for the issue of alterations notices to premises. Article 29(1)(b), as drafted, provides that the article applies to all premises which may constitute a fire safety risk to relevant persons "if any change is made to them or the use to which they are put". The Committee notes that this appears to confer an unlimited power on the authority to serve an alterations notice, since it will always be possible to envisage changes which, were they to be made, would mean that the premises constituted a serious risk.

Q 12 Please indicate whether article 29 (1)(b) of the draft Order, as drafted, is intended to confer an unlimited power on the enforcing authority to serve an alterations notice.

11. Article 29(4)(c) refers to "an increase in the quantities of dangerous substances which are present in or on the premises". This appears to substantively restate the existing law in sections 8(2)(c) and 8A(2)(c) of the 1971 Act. The Committee notes that the 1971 Act makes express provision in respect of an increase in the quantity of dangerous substances stored under a relevant building. This does not appear to have been repeated in the draft Order.

Q 13 Please explain why article 29(4)(c) does not provide for the case where dangerous substances may be present *under* premises.

Whether the proposal prevents any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise (S.O. No. 141(6)(j))

12. Section 36 of the Fire Precautions Act 1971 authorises local authorities to make loans to meet expenditure on alterations to certain residential buildings required by a notice served under the Act. There is no equivalent provision in the draft Order. Local authorities might therefore consider that their freedom to make such loans has been curtailed.

Q 14 Please explain why the draft Order does not contain a provision equivalent to that provided by section 36 of the 1971 Act; and

Q 15 Please explain how local authorities may retain their present authorisation to make loans to meet expenditure on alterations to certain residential buildings required by a notice served under the Order.

Whether the proposal satisfies the tests set out in sections 1 ["proportionality"] and 3 ["fair balance"] of the Regulatory Reform Act (S.O. No. 141(6)(k))

13. The Committee considers that the Department's explanation of the way that article 30 of the draft Order (enforcement notices) meets the proportionality test may be insufficient.

14. The Department has stated that "the measures which could be required to be taken by a notice would be limited to those which are necessary to ensure the failure is remedied. The burden imposed by article 30 (or authorised to be imposed) is closely linked to the burdens which would be imposed by the other duties in the Order – assuming therefore that those duties are proportionate, this would ensure that the burden imposed by article 30 is also proportionate. In addition, paragraph (5) would require consultation with various other authorities and persons with an interest in the premises – this would ensure that the measures require are appropriate in the light of other restrictions which may apply to the premises (for example, contractual obligations not to alter the premises without the consent of the landlord)." (Explanatory statement, para 345.)

15. It seems to the Committee that:—

a) the measures which may be required by an enforcement notice are those which the enforcing authority considers are necessary;

b) the proportionality of article 30 itself cannot be assumed by reference to the other requirements of the Order, but requires separate justification, and

c) the consultation required under article 30 before the service of an enforcement notice will not necessarily ensure that tenants' obligations are respected.

Q 16 Please indicate how the Department considers that the enforcement provisions made in article 30 are proportionate.

16. Article 31 makes provision for the enforcing authority to serve a prohibition notice on premises to prohibit or restrict their use. Although the purpose of article 31 is described in general in the explanatory statement, the Department does not appear to have set out in detail what it considers are the burdens imposed by the provision, and whether those burdens are proportionate to the benefit conferred.

Q 17 Please provide the Department's assessment of the burdens imposed by article 31 of the draft Order, and explain whether, and how, it considers that those burdens are proportionate to the benefit which will result from their creation.

Other matters arising from the Committee's consideration (S.O. No. 141(5))

17. Since fire safety legislation is, in general, within the legislative competence of the Scottish Parliament, the Department proposes to leave parallel changes in Scotland to the Scottish Executive. The Department has indicated that it is liaising with officials in the Scotland Office and the Scottish Executive over the development of the proposals.

18. The Committee notes that certain of the provisions of the proposed Order are reserved matters under the Scotland Act 1998, and therefore fall outside the legislative competence of the Scottish Parliament. The Committee is unclear how the law in Scotland can to be reformed to provide a consistent and parallel regime to the one which it is proposed to introduce in England and Wales.

Q 18 Please indicate the present intentions of the Scottish Executive concerning the implementation of a similar fire safety regime in Scotland. Is there an agreed timescale for the implementation of the regime in England and Wales and in Scotland?

Q 19 Please indicate whether, in the Department's opinion, the subject matter of the proposed order falls in its entirety within the legislative competence of the Scottish Parliament, and therefore can be achieved in its entirety in relation to Scotland by means of an Act of the Scottish Parliament.

Q 20 If the effect of the proposed order cannot entirely be achieved by Act of the Scottish Parliament, please explain how it is intended to reform those matters relating to fire safety law in Scotland which may fall outside the legislative competence of the Scottish Parliament.

I would be grateful to receive your response to the above questions, together with any further information the Department believes would be helpful to the Committee, not later than **Friday 11 June**.

27 May 2004

Appendix B

Letter from the Office of the Deputy Prime Minister to the Clerk of the Committee

Proposal for the Regulatory Reform (Fire Safety) Order 2004: response to request for further information

1. I am writing in response to your letter of 27 May in which you requested, on behalf of the Regulatory Reform Committee, further information from the Office of the Deputy Prime-Minister about the draft Regulatory Reform (Fire Safety) Order.

2. Responses to questions 1 to 17 are set out below. As discussed, I am afraid that as questions 18 to 20 involve the devolved administration for Scotland I am not in a position to include full responses to these inter-linked questions with this reply. As agreed I will reply on these points as quickly as possible.

Q 1 Please explain why the draft Order does not continue the effect of section 12(4)(c) of the Fire Precautions Act 1971, but instead provides that contravention of specified provisions shall be an offence only where it places a relevant person at risk of death or serious injury.

3. ODPM consider that direct prosecution for a failure to comply with the requirements and prohibitions of the draft Order - or regulations made under it - would only be appropriate in cases where the failure to comply actually places relevant persons at a serious level of risk. We believe it is appropriate that minor breaches should be dealt with, in the first instance, by informal advice or where necessary use of an enforcement notice. This approach, which takes into account the views of the Better Regulation Task Force and the principles of good enforcement as set out in the Enforcement Concordat, continues the approach adopted in the Fire Precautions (Workplace) Regulations 1997.

4. Article 32(1)(a) provides that it is an offence for the responsible person to fail to comply with any requirement or prohibition imposed by articles 8 to 21 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. The limitation (that the failure must have placed relevant persons at risk of death or serious injury) re-enacts the effect of regulation 11 of the Fire Precautions (Workplace) Regulations 1997 and means that a prosecution could only be brought in the most serious cases. More minor contravention of articles 8 to 22 might be dealt with either through informal advice or through the service of an enforcement notice (as is presently the case under the 1997 Regulations). Failure to comply with any requirement imposed by an enforcement notice would be an offence under article 32(1)(d).

5. As the Committee has noted, article 32(1)(b) applies a similar approach in relation to a failure to comply with regulations made under article 24, rather than re-enacting section 12(4)(c) and (6) of the Fire Precautions Act 1971. The type of fire precautions which might be specified under such regulations would complement the more general measures set out in articles 8 to 22, to deal with the risks posed by a particular use of premises. An example of existing regulations made under section 12 is the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 which were made following the King's Cross Fire. In the ODPM's view, it is desirable that the offence provisions for failure to comply with a requirement or prohibition imposed by regulations are consistent with those for failure to comply with the fire safety duties set out in articles 8 to 22.

6. The Committee may be concerned that the effect of this would be to reduce the criminal sanctions available for failure to comply with regulations made under article 24, diminishing the effectiveness of enforcement and hence the necessary protection for relevant persons. The ODPM's view is that effective enforcement of any regulations made under article 24 would continue the protection provided by section 12(4)(c) - and that this does not necessarily mean that every failure to comply should result in a prosecution. A combination of prosecution for the most serious offences, together with power to serve an enforcement notice (with a

criminal sanction for failure to comply with a notice) would provide an effective and proportionate enforcement regime, and one which is consistent with the approach taken by the Fire Precautions (Workplace) Regulations 1997.

7. The Committee will also appreciate that the risk posed by fire is such that even seemingly minor breaches of regulations might put a person at risk of death or serious injury in the event of fire. In the circumstances, it is unlikely that it would be difficult to prove that a failure put persons at risk of serious injury or death.

Q 2 Please explain whether the provisions of section 28 of the Fire Precautions Act 1971 are considered necessary protections; if so, how they are to be maintained in the draft Order; and if not, why not.

8. The protection afforded by section 28 of the Fire Precautions Act 1971 applies in two cases. Firstly it applies where there is in force a notice under section 3 relating to certain premises used as a dwelling. Secondly it applies to factory premises, office premises, shop premises or railway premises for which a fire certificate is required or in force, premises to which section 9A applies (exempt premises) or premises to which regulations made under section 12 apply (see paragraph 8 of Schedule 2).

9. Section 3 has never been commenced and so the protection provided by section 28 to tenants of dwellings has to date been theoretical. However, if section 3 had been commenced, the ODPM's view is that the necessary protection provided by section 28 would be continued by the draft Order. Article 5(3) imposes a duty on every person (other than the responsible person) who has, to any extent, control of premises so far as the requirements relate to matters within his control. Where the responsible person was prevented from carrying out or doing with respect to the premises any structural or other alterations by reason of the terms and conditions of an agreement or lease, enforcement action could, subject to the following paragraph, be taken against the lessor by virtue of article 5(3) (i.e. as the person in control) to ensure that consent was given to the works. This also applies to the non-domestic premises referred to in paragraph 8 of Schedule 2.

10. In considering the response to this question and the application of article 5(3), it has become apparent that articles 30, 31 and 32(1) may be too restrictive as currently drafted to give full effect to article 5(3). Articles 30 and 31 allow for the service of an enforcement or prohibition notice on the responsible person and article 32(1) provides for offences committed by the responsible person. This formulation would not appear to catch persons who are not the responsible person but nevertheless have the same duties imposed on them by virtue of article 5(3). Subject to the Committee's views it seems clear that some amendment to the draft Order would need to be made before the draft Order was laid in order to implement the policy proposed and consulted on i.e. so that enforcement action could be taken against any person who had failed to comply with their duties in respect of the premises.

11. Section 19(2) of the Landlord and Tenant Act 1927 and section 81(1) of the Housing Act 1980 are also relevant. Section 19(2) provides that in all leases[1] (whether made before or after the commencement of the Act) containing a covenant condition or agreement against the making of improvements without the consent of the landlord, such a covenant is deemed to be subject to an implied term that such consent is not to be unreasonably withheld. Although each case would turn on its facts, it is reasonable to assume that a court would consider that it would be unreasonable to withhold consent to the making of an alteration which was necessary to ensure the safety of persons in or on the premises. If consent is unreasonably withheld, the tenant can either proceed with the alteration or seek a declaration to that effect. Section 81(1) of the Housing Act 1980 apply a similar implied covenant into protected and statutory tenancies. Consent which is unreasonably withheld is treated as given and the onus of proving that consent was withheld reasonably is on the landlord.

Q 3 Please indicate whether it is intended that the effect of paragraphs 1 and 3 of Schedule 20 to the Rent Act 1977 should be achieved in the draft Order; if so, how the effect is achieved, and if not, why not.

12. It is not intended that the effect of paragraphs 1 and 3 of the Schedule 20 to the Rent Act 1977 should be achieved in the draft Order as these provisions have never effectively had any statutory force.

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1 Except leases of agricultural holdings, farm business tenancies or mining leases.

13. Schedule 20 applies to dwellings which are the subject of regulated tenancies (i.e. protected or statutory tenancy - see section 18). A protected tenancy is defined in section 1 as a tenancy under which a dwelling-house (which may be a house or part of a house) is let as a separate dwelling. A statutory tenancy arises after the termination of a protected tenancy (section 2). Paragraph 1 of Schedule 20 applies where a dwelling which is the subject of a regulated tenancy consists of or is comprised in premises with respect to which there has been issued a fire certificate covering the use of the dwelling as a dwelling. Section 3 of the Fire Precautions Act 1971 concerns fire certificates for the use of premises as dwellings, but as indicated above, section 3 has never been commenced and consequently paragraph 1 has never had any effect.

14. Paragraph 3 applies where, in the case of any premises consisting of a dwelling-house let on a protected tenancy, the rent payable in respect of the premises is increased by a section 28 order (i.e. an order made under section 28 of the 1971 Act). In the context of Schedule 20, section 28 only applies where there is in force a notice under section 3 of the 1971 Act relating to premises, so again the provision does not appear to have any effect.

Q 4 Please explain whether section 71 of the Building Act 1984 is specifically related to fire safety, or whether it has an application which is not related to fire safety.

Q 5 If the latter, please indicate how the protections not related to fire safety are to be maintained after the repeal of section 71.

15. In answer to question 4, the ODPM's view is that section 71 of the Building Act 1984 is limited to fire safety. Question 5 does not, therefore, arise.

16. Section 71(5) provides that the section applies to the buildings to which section 24 applies (i.e. those buildings listed in section 24(4) - including theatres, shops, schools and churches). However, section 24(3) provides that where building regulations imposing requirements as to the provision of means of escape in case of fire are applicable to a proposed building, section 24 does not apply in relation to the proposed building. This is a clear indication that section 24 and hence section 71 is concerned solely with fire safety. The draft Order would apply to all the premises to which section 24 applies.

17. Section 71(6) also provides that the section is subject to section 30(3) of the Fire Precautions Act 1971. Section 30(3) disapplies section 71 in relation to certain premises , including premises in respect of which a fire certificate is for the time being in force. Again this is a clear indication that section 71 is limited to fire safety.

Q 6 Please explain how the draft Order is intended to extend to the internal common parts of houses in multiple occupation, given that the definition of "domestic premises" in article 2 of the draft Order appears not to exclude such internal common parts.

18. It is intended that the draft Order would apply to the internal common parts of dwellings - but not to private living accommodation (i.e. parts of a dwelling a person has a right to occupy on their own account and does not share with the occupants of other private living accommodation). Shared parts would not be premises occupied as a private dwelling and so would not be excluded from the draft Order by article 6(1)(a).

Q 7 Please explain the intended meaning and effect of the provision contained in article 6(1)(c) of the proposed Order.

19. The purpose of article 6(1)(c) is to disapply the draft Order in relation to ships where the activities carried on are covered by existing maritime safety law. The draft Order would apply to ships when under construction or repair by persons other than the master or crew. "Normal ship-board activities" is defined in article 2(1) to include the repair of a ship, save repair when carried out in dry dock.

Q 8 Please indicate whether the provision is to be found in existing fire safety or health and safety legislation; and, if so, where.

20. Article 6(1)(c) derives from regulation 3(1) of the Dangerous Substances and Explosives Atmospheres Regulations 2002 and regulation 2 of the Management of Health and Safety at Work Regulations 1999. The Fire Precautions (Workplace) Regulations 1997 do not apply to a workplace which is a ship, except a ship which is the course of construction or in the course of repair by persons who include persons other than the master and crew of the ship (see regulation 3).

Q 9 Please indicate what is the intended effect of article 7(1).

Q 10 Please explain how the terms "occasional work" and "short-term work" are to be defined.

Q 11 Please explain what is meant by "work regulated as not being harmful, damaging or dangerous to young people in a family undertaking".

21. The provisions of the draft Order referred to in article 7(1) (i.e. articles 9(4) and (5) and 19(2)) are intended to implement articles 6 and 7 of Council Directive 94/33/EC on the protection of young people at work. Article 2(2) of that directive provides that –

"Member States may make legislative or regulatory provision for this Directive not to apply, within the limits and under the conditions which they set by legislative or regulatory provision, to occasional work or short-term work involving:

(a) domestic service in a private household, or

(b) work regarded as not being harmful, damaging or dangerous to young people in a family undertaking."

The Directive does not define these words.

22. The wording of article 7(1) (which derives from regulation 2(1) of the Management of Health and Safety at Work Regulations 1999) reflects the wording of the exception provided by article 2(2) of the Directive - although there is a typographical error in the draft Order - article 7(1) should refer to work "regarded" as not being harmful rather than "regulated".

Q 12 Please indicate whether article 29(1)(b) of the draft Order, as drafted, is intended to confer an unlimited power on the enforcing authority to serve an alterations notice.

23. It is not ODPM's intention to confirm an unlimited power to serve an alterations notice. We have sought to achieve a position whereby an alterations notice could only be served in relation to premises which either constituted a serious risk to relevant persons or the likelihood of such a risk is reasonably foreseeable due to the nature of the premises and their use. In the latter circumstances, changes of the type defined in article 29(4) may result in the fire precautions becoming inadequate and relevant persons being placed at serious risk. By necessity this would be a subjective test, although it would be subject to the implied requirement to act reasonably and the need to ensure compliance with the European Convention on Human Rights. The ODPM intends to issue guidance to enforcing authorities on the circumstances when an alterations notice would be justified. Enforcing authorities would be required to have regard to this guidance by article 26(2).

24. Article 35 would provide for an appeal against an alterations notice, where the grounds for service could be assessed. The court would have power to cancel the notice if it concluded that article 29(b) was not satisfied.

25. Although not intended to be unlimited, article 29 would confer a wide power to serve a notice. This would allow enforcing authorities to target notices on those premises it considers pose the greatest risk to safety (or which might so do if there was an alteration to the premises).

Q 13 Please explain why article 29(4)(c) does not provide for the case where dangerous substances may be present *under* premises.

26. The reference in article 29(4)(c) to dangerous substances being "in or on" premises is consistent with references elsewhere in the draft Order (for example, articles 12(1) a 16(1)). The draft Order applies to

"premises" rather than "buildings" as the Fire Precautions Act 1971 does (see for example section 8(2)(c) and section 43(1) for the definition of "relevant building"). Article 2(1) defines "premises" to include any place - consequently the ODPM's view is that any underground place in which dangerous substances are stored would fall with the definition of premises. Given that "premises" has a wider definition than "buildings", a reference to substances under the premises is not considered to be necessary.

Q 14 Please explain why the draft Order does not contain a provision equivalent to that provided by section 36 of the 1971 Act; and

Q 15 Please explain how local authorities may retain their present authorisation to make loans to meet expenditure on alterations to certain residential buildings required by a notice served under the Order.

27. Section 36 of the 1971 Act only applies where there is in force a notice under section 3. As noted above, section 3 has never been commenced so the lack of re-enactment has no practical effect. Consequently ODPM's view is that the draft Order would not prevent a local authority from continuing to exercise any freedom which it might reasonably be expected to continue to exercise.

28. In any case, section 435 of the Housing Act 1985 gives local authorities power to advance money to any person for the purpose of acquiring or constructing a house, converting another building into a house or altering, enlarging, repairing or improving a house. "House" is defined in section 457 to include any part of a building which is occupied or intended to be occupied as a separate dwelling including, in particular, a flat. Section 435 of the Housing Act 1985 would appear to give the local authority the same power to advance money to make alterations as would have been provided by section 36, had section 3 of the 1971 Act been in force.

Q 16 Please indicate how the Department considers that the enforcement provisions made in article 30 are proportionate.

29. The powers that would be conferred on an enforcing authority by article 30 would be limited to those which were necessary to ensure that a failure to comply with any provision of the draft Order or regulations made under it was remedied.

30. The ODPM's view is that the burden which would be imposed on persons by article 30 would be proportionate to the benefit of ensuring effective enforcement of the draft Order and hence a high level of protection for relevant persons in the event of fire. Article 30 would re-enact, with some modification, section 9D of the Fire Precautions Act 1971 and regulation 13 of the Fire Precautions (Workplace) Regulations 1997. It is very similar to sections 21 and 23 of the Health and Safety at Work etc Act 1974 (improvement notices).

31. Article 30 would impose a number of burdens. Article 30(1) and (2) would impose a burden by requiring the responsible person to take steps to remedy the failure alleged in the notice. Failure to comply would be a criminal offence. A burden would also be imposed on the enforcing authority by requiring it to include certain measures in a notice. Paragraph (3) would impose a burden on the responsible person by allowing the enforcing authority to include in an enforcement notice a direction as to the measures which the responsible person must take. Paragraph (5) imposes a burden on the enforcing authority by requiring it to consult with other specified authorities.

32. In relation to the first burden (i.e. imposed by paragraphs (1) and (2)), the purpose of the notice would be to ensure that the fire safety duties contained in the draft Order were complied with. This would provide an obvious benefit to relevant persons. The only steps that would be required to be taken would be those which were necessary to remedy the failure - the nature of the burden would thus be determined by the nature of the contravention (and the nature of the ensuing risk to relevant persons) and would thus be proportionate. The small burden imposed on enforcing authorities would be proportionate to the benefit to the responsible person of knowing what is alleged.

33. The following matters are also relevant to the question of proportionality:

(a) An enforcement notice could only be served where the enforcing authority was of the opinion that the responsible person had failed to comply with any provision of the draft Order (or of regulations made under it). Although initially a subjective test, the validity of the enforcing authority's view could be tested on appeal under article 35 (and article 30(2)(a) requires the enforcing authority to give express reasons why they think that the draft Order has not been complied with). Article 35(2) provides that on an appeal, the court may either cancel or affirm the notice. A further appeal to the Crown Court would be provided by article 35(7).

(b) The bringing of an appeal would suspend the operation of the enforcement notice (see article 35(3)) - so that the responsible person would not need to take any action in response to the notice until the matter had been determined by an independent tribunal.

(c) It is implicit that the enforcing authority, as a public authority, would have to act reasonably in concluding that sufficient grounds existed to justify service of a notice. Enforcing authorities would also be subject to section 6(1) of the Human Rights Act 1988 which would require them to act in a manner compatible with the European Convention on Human Rights and would, in particular, ensure that an enforcement notice could only be served where it was necessary and proportionate to ensure the safety of relevant persons.

(d) Although failure to comply with an enforcement notice would be an offence, that offence would be subject to the due diligence defence contained in article 33.

(e) The enforcement notice mechanism would provide enforcing authorities with an effective method of enforcement without recourse to prosecution in every case. This would give enforcing authorities the ability to respond in a proportionate way to the nature and seriousness of the contravention.

34. Article 30(3) provides that an enforcement notice may, but need not, include directions as to the measures which the enforcing authority considers necessary to remedy the alleged contravention - and may be framed to allow alternatives. This would benefit not only relevant persons, by ensuring that the steps taken to remedy the contravention are the appropriate ones; it would also benefit the responsible person who would then be in a position to know what steps would be needed to remedy the contravention. The notice could be framed so as to give the responsible person a choice between different ways of remedying the contravention - but in some cases, there may only be one solution which would adequately remedy the contravention and it would be counterproductive, time-consuming and costly to pretend that there is a valid alternative. Again, although the decision to include directions as to the measures which are necessary to remedy the failure is initially a subjective test, the validity of the enforcing authority's view could be tested on appeal under article 35. Again, it is also implicit that the enforcing authority, as a public authority, must act reasonably in concluding that sufficient grounds exist to justify the measures included in the notice. In the circumstances the measures that might be required by a notice are those which would be necessary and proportionate to remedy the contravention. The burden imposed would be proportionate to the benefits.

35. The consultation requirements contained in article 30 are partly aimed at ensuring that the measures which might be required by an enforcing authority are proportionate to the contravention (and also that all relevant considerations are taken into account). The burden is proportionate to the benefits that would ensure. Although the requirements would not by themselves ensure that tenant's obligations are respected, the requirements would put the enforcing authority on notice that such obligations existed. The authority would be required to take the obligations into account in deciding what measures should be required (and if necessary, the matter could be tested on appeal). However, there may be cases where measures which are necessary to ensure the continuing safety of relevant persons conflict with tenant's obligations. In such cases, enforcement action could be taken against the landlord to the extent of the landlord's control (see further, paragraphs 9 and 11 above).

Q 17 Please provide the Department's assessment of the burdens imposed by article 31 of the draft Order, and explain whether, and how, it considers that those burdens are proportionate to the benefit which will result from their creation.

36. Article 31 would impose a burden on the responsible person by authorising the service of a notice in certain circumstances prohibiting or restricting the use of premises until such time as the risk to persons has been removed. A prohibition notice could include directions as to the measures which would need to be to taken to remedy the matters specified in the notice. Failure to comply with a prohibition notice would be an offence (see article 32). The prohibition would take effect immediately if there was an imminent risk of serious personal injury. Although the bringing of an appeal would not automatically suspend the effect of the notice, article 35(4) would allow the court to order the suspension pending the hearing of the appeal.

37. Article 31(3) would impose a burden on enforcing authorities by requiring them to include in a prohibition notice certain specified matters. Article 31(6) would also impose a burden by requiring the enforcing authority to consult the local housing authority before serving a notice in relation to a house in multiple occupation.

38. The benefit of article 31 (which would re-enact section 10 of the Fire Precautions Act 1971), would be that it would ensure a high level of protection for relevant persons. Although the burdens would be onerous, in some cases very onerous, they would be proportionate to the benefit of ensuring public safety.

39. The purpose of a prohibition notice would be to provide an emergency power for enforcing authorities to act in cases where it is necessary to prohibit or restrict the use of premises to ensure the safety of relevant persons. The nature of the risk which must be present means that it would be essential to act quickly without any unnecessary delay. Although the ability to act quickly would be vital, article 31 would ensure that the decision to serve a prohibition notice would be subject to an appeal to an independent and impartial tribunal.

40. A prohibition notice would not be dependent on any failure to comply with the draft Order (although this may be the case). However, a notice could only be served where the enforcing authority considered that the use of the premises involved or would involve a risk so serious that use of the premises ought to be prohibited or restricted. This is a high threshold, which would ensure that a prohibition notice was only served where absolutely necessary. Although the decision to serve a notice would initially be a subjective one by the enforcing authority, their discretion would be limited by the wording of article 31(1) and the need to act reasonably. The authority would be required to give their reasons for concluding that a notice was appropriate and the matter could be tested on appeal. The prohibition or restriction imposed by a prohibition notice would only continue until such time as the matters giving rise to the risk had been remedied.

41. Although failure to comply with a prohibition notice would be an offence, that offence would be subject to the due diligence defence contained in article 33.

42. As with enforcement notices, the enforcing authority would be required to act in a way which was compatible with the European Convention on Human Rights. A prohibition notice could only be served where it was necessary and proportionate to ensure the safety of relevant persons.

43. In the circumstances, the burdens imposed by article 31 would be proportionate to the benefit of ensuring the safety of relevant persons.

44. Article 31(4) provides that a notice might include directions as to the measures which will have to be taken to remedy the matters specified in the notice. It is implicit that the measures which might be required are those which would be necessary to remedy the matters referred to in the notice. Again, the enforcing authority's decision would be subject to appeal. The burden which would imposed by article 31(4) would be proportionate to the benefit to the responsible person of knowing what he must do to discharge the notice.

45. The burdens which would be imposed on enforcing authorities are not particularly onerous when measured against the benefit to the responsible person of knowing why a notice has been served and what he has to do to discharge the notice, and the benefit of ensuring that the views of the local housing authority are taken into account by the enforcing authority before a notice is served.

Other matters

46. During the course of the presentation the Committee raised the question of liability insurance for contractors who bear a degree of responsibility for safety under the proposed new regime. The ODPM has discussed the issue with insurance industry contacts (who represented the industry on the Fire Safety Advisory Board) and can advise the Committee that neither we or the insurers foresee that implementation of these proposals would result in an increase in liability insurance premiums.

11 June 2004

Appendix C

Letter from the Clerk of the Committee to the Office of the Deputy Prime Minister

Thank you for your letter of 11 June which set out the Department's response to the questions posed by the Committee in my letter of 27 May.

In that letter I noted that the Committee would be considering aspects of the proposal at a subsequent meeting. The Committee considered these aspects at its meeting yesterday and resolved to raise additional issues with the Department. The issues which concern the Committee are set out below, together with questions arising from them, under the relevant categories for consideration set out in the Committee's Standing Order. For clarity, the sequence of question numbers follows that given in my earlier letter.

In your letter of 11 June you noted that the Department was seeking information from the Scottish Executive to enable it to provide a full response to questions 18 to 20 posed by the Committee on 27 May. The Committee would be content to receive a response to those questions at the same time as the Department's response to the questions set out below.

Whether the proposal has been the subject of, and taken appropriate account of, adequate consultation (S.O. No. 141(6)(c))

1. The Committee has noted the substantial number of responses to the consultation on the proposed Order, and the resulting amendments to the proposal identified by the Department in the explanatory statement.

2. The Committee recognises that it has not been possible to provide a full analysis of the consultation responses in the explanatory statement. It nevertheless considers that the consultation raised certain issues of concern which may not have been fully addressed in the explanatory statement.

3. In particular the Committee recognises the Department's exposition of the way in which necessary protections have been retained in the case of each local Act which is proposed to be amended by the draft Order, but is concerned to know how the provisions have taken account of the representations made on the potential removal of protections.

Q 21 Please indicate the grounds on which several fire brigades, local authorities and fire safety consultants, among others, considered that the proposals in the consultation paper did not maintain necessary protections, and what account the Department took of these representations.

Q 22 Please indicate what account the Department has taken of the representations made concerning the likely costs to fire brigades, and what amendments (if any) have been made to the proposal as a result.

Q 23 Please indicate what account has been taken of consultation responses questioning the specific protection removed by the proposed repeal of local Acts, and, following consultation, what provisions (if any) have been introduced into the proposed Order to retain that protection.

Q 24 Please indicate what account the Department has taken of representations which questioned the need for a duty of care on employees to tackle a fire in its early stages using hand-held equipment.

Q 25 Please indicate what account was taken of concerns raised by small businesses (for example, over the cost of compliance with the proposals).

Q 26 Please indicate what account has been taken of responses from those sectors which were not previously included within the specific provisions of fire safety legislation (e.g. the self-employed and voluntary sectors).

Q 27 Please indicate what account has been taken of concerns raised over the proposed Order's application to high-risk premises.

Whether the proposal has been the subject of, and taken appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation (S.O. No. 141(6)(m))

4. The Department has provided an estimate of the increases or reductions in costs or other benefits which may result from the proposal's implementation in the form of a regulatory impact assessment (RIA). The RIA makes significant claims about the savings to business and the fire service from the implementation of the proposed order, and the estimated costs of compliance.

5. The Committee seeks to assess the robustness of the assumptions in the RIA before reporting its assessment of the proposal to the House. The questions below are intended to assess various aspects of the RIA. They are based on the text of the RIA as annexed to the explanatory statement, and do not take account of any additional relevant material which may have been included in the text of that statement.

Economic cost of fire

Q 28 The Department estimates that the number of fires in England and Wales will reduce by 5 to 15% as a result of the proposed Order. Please indicate the evidence the department has which supports an assumption of a reduction in this range.

Q 29 Please indicate whether, in arriving at the forecast reduction rates to fires, the Department made any analysis of the trend in business fires over recent years. Please also indicate the basis for the assumption in the RIA that the trend in business fires will remain constant, and whether the introduction of the proposed Order is likely to affect the prevailing trend.

Q 30 The Committee notes that the premises types used to compile the table at Annex A of the RIA exclude voluntary sector and self-employed fire number and cost statistics. Please explain why these have not been incorporated, and indicate the effect, if any, which incorporation would have on the result.

Q 31 The Economic Cost of Fire Estimates for 2000 put the total cost of fire for commercial premises at £2.2 billion, whilst Annex A to the RIA shows a consequential cost figure of £786.4 million. Please explain why the consequential and not the total cost figure has been used to prepare the RIA.

Savings from fewer false alarms

Q 32 The RIA states (on page 6) that currently "only a third of false alarms are generated by faulty equipment". Please indicate the basis for the Department's assumption that false alarms will reduce overall by between 5 and 15% as a result of the draft Order.

Q 33 Please indicate why the fire service savings figures are based on 2000 costs and not more recent figures, and the assessment the Department has made of the trend in fire service costs over the last three years.

Q 34 Please indicate how the potential savings to business from reductions to the incidences of false alarms has been calculated.

Overall savings for the Fire Service

Q 35 Please indicate the basis for the assumption that direct enforcement action by the fire authorities, rather than as third parties consulted by those administering other regimes, will reduce false alarms. Does the Department consider that the number of enforcement actions is likely to increase?

Q 36 Please indicate the analysis the Department performed on the likely costs to the Fire Authorities of risk-based inspections. Are these costs likely to be higher than certification work if more judgment is needed on the part of inspecting officers?

Q 37 The RIA states that the number of inspections is not expected to change and nor are the resources available. Please indicate the basis for this assumption.

Q 38 Please indicate how any increase in costs to the Fire Service are to be funded, since fire authorities will no longer levy certification charges.

Q 39 The Committee notes that the removal of certification revenue from fire authorities appears to represent a net loss to them. Please indicate whether this revenue is to be made up from other sources. If fire authorities are to conduct the same number of inspections for the same resources, is there any risk of a shortfall?

Savings for business

Q 40 Please indicate whether the figures for savings to businesses from a reduction in false alarms assume that all false alarms occur during the working day, and the analysis (if any) which has been made of the costs of false alarms occurring outside normal working hours.

Q 41 What effect would incorporation of this analysis have on the estimated savings to businesses from fewer false alarms?

Q 42 If the effect of the RRO is to reduce the number and seriousness of fires, the insurance industry should have to pay out less in claims and so premiums for business should reduce. Please indicate whether the Department expects premiums to fall as a result.

Q 43 If premiums do not fall, is there not a risk of a double cost to business of the same insurance premiums and additional compliance costs?

Q 44 Please state the evidence for the Department's assumptions made in respect of the costs of purchasing new guidance and familiarisation with it by businesses?

Q 45 Please indicate whether the Department has considered the need for ongoing advertising costs, to avoid a return to the current low level of awareness of fire safety regulations amongst business.

Whether the proposal includes provisions to be designated in the draft order as subordinate provisions (S.O. No. 141(6)(n))

6. Article 51(1) of the draft Order designates articles 9 to 22 as subordinate provisions amendable by a subordinate provisions order subject to the negative procedure. In paragraph 365 of the Explanatory Statement the Department states that the fact that these articles implement European obligations provides an external control on the extent to which the articles could be amended. Any amendment to articles 9 to 22 would have to be compatible with European law, but it appears to the Committee that the power to amend the relevant articles could have a broader application.

Q 46 Please indicate whether, in the Department's view, articles 9 to 22 could be amended otherwise than in implementation of European obligations, in particular by imposing additional requirements.

7. Article 51(1) also designates article 45 as a subordinate provision. The Department argues that this may be required to avoid any conflict with Buildings Regulations, if the latter were to impose consultation requirements.

Q 47 Please indicate the potential changes to article 45 which are envisaged, and whether it would in practice be possible to avoid any potential conflict in the drafting of subsequent Buildings Regulations.

I would be grateful to receive your response to the above questions, together with any further information the Department believes would be helpful to the Committee, not later than **Friday 2 July**.

It is possible that the Committee may cover some or all of the ground outlined by the questions above in oral evidence with the Minister on 29 June. Should the Department consider that a proposed response to a question above has been entirely superseded by the evidence given by the Minister, it would be appropriate to indicate accordingly.

16 June 2004

Appendix D

Letter from the Office of the Deputy Prime Minister to the Clerk of the Committee

Thank you for your letter of 16 June in which you raised, on behalf of the Regulatory Reform Committee, a number of questions regarding the ODPM proposal for a Regulatory Reform (Fire Safety) Order.

Answers are given in the order the questions were raised and include questions 18 to 20 from your letter of 27 May. I have noted that there is in fact no question 30 but have maintained your numbering for ease of reference.

Q 18 Please indicate the present intentions of the Scottish Executive concerning the implementation of a similar fire safety regime in Scotland. Is there an agreed time-scale for the implementation of the regime in England and Wales and in Scotland?

The Scottish Executive's intention is, as far as possible (but subject to those areas where Scottish circumstances are different e.g. building regulations), to have a fire safety regime which is entirely consistent with the arrangements which would be introduced by the draft Order in relation to England and Wales. The Scottish Executive has consulted on proposals to make similar changes to fire safety legislation through an Act of the

Scottish Parliament. The consultation paper was issued on 1st October 2003 and the consultation period finished on 31st December 2003.

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004 and it is hoped that it will complete its Parliamentary consideration by Spring 2005. The ODPM will be liaising with the Executive about arrangements for implementation of the new fire safety regime.

Q 19 Please indicate whether, in the Department's opinion, the subject matter of the proposed order falls in its entirety within the legislative competence of the Scottish Parliament, and therefore can be achieved in its entirety in relation to Scotland by means of an Act of the Scottish Parliament.

The ODPM's view is that there are some matters covered by the draft Order which would not be within the legislative competence of the Scottish Parliament.

Reservation H2 in Schedule 5 to the Scotland Act 1998 reserves certain aspects of fire safety which are the subject matter of Part 1 of the Health and Safety at Work etc Act 1974 - including fire safety on construction sites and fire safety on premises which, on the principal appointed day (i.e. 1st July 1999), are of a description specified in Part 1 of Schedule 1 to the Fire Certificates (Special Premises) Regulations 1976. At present the reserved matters fall outside the scope of the workplace fire precautions legislation[1] and are covered by the relevant statutory provisions[2] of the Health and Safety at Work etc Act 1974.

Paragraph 9 of Schedule 5 is also relevant. This reserves certain defence matters, including the armed forces of the Crown and visiting forces.

The draft Order would apply in relation to some premises and activities which are currently reserved matters including construction sites and "special premises"[3]. To that extent, it seems that reform of general fire safety cannot be achieved in its entirety through an Act of the Scottish Parliament . In addition, it is doubtful whether the Parliament could confer enforcement functions on the fire service maintained by the Secretary of State for Defence in relation to defence premises, or on the Health and Safety Executive (as article 25 of the draft Order would do).

Q 20 If the effect of the proposed order cannot entirely be achieved by Act of the Scottish Parliament, please explain how it is intended to reform those matters relating to fire safety law in Scotland which may fall outside the legislative competence of the Scottish Parliament.

The options for how to reform those matters relating to fire safety law in Scotland which fall outside the legislative competence are being explored by the Scottish Executive, the Scotland Office, the Office of the Solicitor to the Advocate General, the Health and Safety Executive, the ODPM and the Department for Constitutional Affairs. The primary objective would be that all legislative provisions for general fire safety in Scotland were consistent.

Q 21 Please indicate the grounds on which several fire brigades, local authorities and fire safety consultants, among others, considered that the proposals in the consultation paper did not maintain necessary protections, and what account the Department took of these representations.

The principal area of concern was that removal of fire certification may reduce necessary protection. The consultation responses were not clear on the grounds for this view. However, following discussion with stakeholders we ascertained that the reasons centred around whether the protection which would be provided through risk assessment by the responsible person would equate to the level of protection provided through the fire authority stipulating the precautions to be in place if a fire certificate were to be issued (and then listing those precautions in a fire certificate). In considering the point, ODPM noted that many respondents felt that the proposals would maintain necessary protection.

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1 See regulations 3(5) and 9(2) of the Fire Precautions (Workplace) Regulations 1997.

2 Defined in section 53 of the 1974 Act.

3 The draft Order would revoke the Fire Certificates (Special Premises) Regulations 1976.

Following discussion with stakeholders, we concluded that the necessary protection provided by fire certification is provided by the application of legal responsibilities and the ability of an enforcing authority to monitor and check the precautions in place - and where necessary take action to improve them through enforcement action.

In the Government's view the protection provided by fire certification is continued by the proposed new regime through application of general and specific duties on those responsible for premises and the provision of reasonable and appropriate enforcement mechanisms for the enforcing authorities - including a duty on those authorities to enforce the law.

Other matters raised were:

1. Funding Concerns (Main concern here was that enforcing authorities had the funding to police the regime and that funding was available to train officers in respect of the new regime).

2. High Risk Premises (Main thrust here was there should be a form of validation and that high risk premises should advise fire authorities of their existence)

3. Sleeping Risk & Sports Grounds (Concern that the removal of fire certificates could lead to a drop in standards in hotels etc. On Sports Grounds, concern over making concerns known to the safety committee)

4. 3rd Party Certification (It was suggested that the only way forward to maintain the level of protection was to have mandatory 3rd party certification of products and services).

5. Local Act Removal (concern was that the local act provisions that would be removed may, in the areas concerned, lower the safety standards). This matter is looked at more closely in the response to Question 23.

6. Confusion over regimes in England & Wales & Scotland (simply stated concern was raised over companies with properties on both sides of the border where 2 different regimes could be in place with 2 different ethos' required)

7. Licensed Premises (concern over the inability of local authorities to set fire conditions in licensed premises, also concerns over ensuring safe capacity number requirements are maintained)

In each case we have considered the points made and formed a judgement - and have done so in consultation with stakeholders through the Fire Safety Advisory Board and (in relation to local Act provisions) the Building Regulations Advisory Council. I think that with the exception of sports grounds (in point 3 above) these points are covered in responses to the Committee in writing or oral evidence.

In relation to protection at sports grounds, consultees rightly pointed out that due to the creation of unitary authorities (and so combined fire authorities) not all fire authorities fell within the definition of a fire authority used in sports ground safety legislation. Consequently they had ceased to be statutory consultees of the safety authority.

Amendments are proposed in the draft Order to amend the sports ground legislation to re-instate the fire authorities to their proper role of statutory consultees.

Q 22 Please indicate what account the Department has taken of the representations made concerning the likely costs to fire brigades, and what amendments (if any) have been made to the proposal as a result.

We have considered the representations received and discussed them further with the fire service and other stakeholders.

The Government provided additional funding to the fire authorities in 1997–99 to provide for the introduction of the risk based fire safety regime brought about by the Fire Precautions (Workplace)

Regulations 1997. Since then training in enforcement of risk assessment based fire precautions is, and will continue to be, a normal part of fire service training. The proposed new regime is effectively a consolidation of existing measures.

ODPM also considered the question of lost revenue for the fire service through removal of fire certification. As noted in the RIA, the revenue is on a costs recovery basis and relates only to the work undertaken in physically producing a fire certificate. Although the fire service would lose the revenue, they would also lose the costs as this work will no longer be undertaken. Removal of fire certification is therefore cost neutral for the fire service.

In the light of the further discussions with the fire service we have not amended the proposals as a result of the representations received.

Q 23 Please indicate what account has been taken of consultation responses questioning the specific protection removed by the proposed repeal of local Acts, and, following consultation, what provisions (if any) have been introduced into the proposed Order to retain that protection.

It is the Government's policy that provision in local Acts should be removed if and when they cease to be necessary. In the case of the proposed repeals and amendments that would be brought about by the draft Order we included only those provisions where the subject matter is covered by national provision or by the proposed Order. In the light of the consultation responses, we sought advice from stakeholders through a working group of the Building Regulations Advisory Committee in conjunction with the Fire Safety Advisory Board. Each provision to be amended was considered in its own right. The proposed Order reflects the recommendation made by the working group (and endorsed by the full BRAC and FSAB) that the provisions will cease to be necessary, because all necessary protections they afford will be provided by existing Building Regulations or the provisions of the draft Order.

Q 24 Please indicate what account the Department has taken of representations which questioned the need for a duty of care on employees to tackle a fire in its early stages using hand-held equipment.

Responses, and subsequent discussion with stakeholders, essentially showed two opposing views: (a) that there should be a duty so that fire fighting equipment must be provided and (b) there should not be a duty as this may require employees to place themselves in danger (and so potentially itself breach the ethos of the reform and more specifically the provisions of health and safety law). ODPM, in discussion with stakeholders considered the arguments made and concluded that the law should provide for necessary fire fighting equipment to be available for use for the purposes of protecting persons against risks from fire but that no employee should be required to place himself/herself in danger.

The Committee will wish to note that the provision of fire fighting equipment for the purposes of the Fire Precautions Act 1971 is limited to protection of the means of escape in case of fire. In accordance with the policy outlined in our consultation document, and subsequently discussed with stakeholders, the draft Order provides that fire fighting equipment should be provided (on a where necessary basis – i.e. where the risks show that it is needed) for the safety of persons, which is a broader requirement which seeks to ensure that equipment should be available whenever it needed to protect people from fire and not just to allow safe escape from a fire.

Q 25 Please indicate what account was taken of concerns raised by small businesses (for example, over the cost of compliance with the proposals).

Each point raised was discussed with stakeholders - and in particular the Federation of Small Businesses. With reference to the particular example of costs of compliance, ODPM recognises concerns about guidance and proposes to produce short user-friendly leaflet style documentation as well as fuller, though still user-friendly, main guidance. We also noted concerns about the costs of time required to read guidance and in discussion with business interests, have increased the time and staff costs included in the final draft RIA to reflect these concerns.

Q 26 Please indicate what account has been taken of responses from those sectors which were not previously included within the specific provisions of fire safety legislation (e.g. the self-employed and voluntary sectors).

Although consulted, few responses were received directly from the voluntary sector or the self employed. We considered those which were received.

Those consulted did include the National Council for Voluntary Organisations - who did not respond to the consultation document.

Q 27 Please indicate what account has been taken of concerns raised over the proposed Order's application to high-risk premises.

We have considered the point made by some consultees that special provision should be make for the validation of risks assessment s for high risk premises and have done so in discussion with stakeholders.

The Committee will recall that this matter was discussed in the evidence session on 29 May and I do not think there is anything further I can usefully add.

Q 28 The Department estimates that the number of fires in England and Wales will reduce by 5 to 15% as a result of the proposed Order. Please indicate the evidence the department has which supports an assumption of a reduction in this range.

ODPM's assumption of a reduction in the number of fires in England and Wales by 5 to 15% is based on the best estimate of what we believe to be realistically achievable following discussion with the Fire Service. The Order will apply a duty on all responsible persons remove or reduce the risk of fires occurring. The Fire Service' views are that on this basis and with the statutory backing for fire prevention that the Order will provide to them as enforcers these levels can be achieved in the short to medium term. We have used the lower end of the scale for the assessment and it is ODPM's aim together with the Fire Service to continue to work to reduce these levels further.

Q 29 Please indicate whether, in arriving at the forecast reduction rates to fires, the Department made any analysis of the trend in business fires over recent years. Please also indicate the basis for the assumption in the RIA that the trend in business fires will remain constant, and whether the introduction of the proposed Order is likely to affect the prevailing trend.

The trend in fires in commercial premises over the last decade has remained largely static in statistical terms. However, as indicated, we expect that increased awareness and simplification of the current plethora of Fire Safety Laws/Regulations, together with the move towards a prevention based regime, will reduce the number of fires occurring in business premises.

Q 30 The Committee notes that the premises types used to compile the table at Annex A of the RIA exclude voluntary sector and self-employed fire number and cost statistics. Please explain why these have not been incorporated, and indicate the effect, if any, which incorporation would have on the result.

Statistics on the number of premises in the voluntary sector and self-employed are not held. ODPM have been unable to obtain this information despite asking the Charities Commission and others involved in this sector. Within other parts of the RIA we have made assumptions based on the figures that are held in employment statistics and information from the Small Business Service - and used information gathered during the Litmus Test Exercise. Our estimates of the premises used by the voluntary sector and the self employed are included in our overall cost calculations.

Q 31 The Economic Cost of Fire Estimates for 2000 put the total cost of fire for commercial premises at £2.2 billion, whilst Annex A to the RIA shows a consequential cost figure of £786.4 million. Please explain why the consequential and not the total cost figure has been used to prepare the RIA.

The Economic Cost of Fire estimates the total cost to the economy. The RIA figure represents ODPM estimates of the direct cost to business of a fire that occurs. Similarly, we have only included savings for business which result in the reduction of the number of fires. We have not included other matters such as the cost of the Fire Service's response.

Q 32 The RIA states (on page 6) that currently "only a third of false alarms are generated by faulty equipment". Please indicate the basis for the Department's assumption that false alarms will reduce overall by between 5 and 15% as a result of the draft Order.

The reference on page 6 of the RIA is to false alarms generated by faulty apparatus: we do not make the assumption of a reduction of 5-15% on the number of all false alarms. i.e. malicious actuation and so forth. ODPM, in discussion with the fire service, believe that a reduction in the number of false alarms due to apparatus of between 5 and 15% is realistically achievable as the powers within the Order, such as the ability to take action against the contractor responsible for installation or maintenance of a fire alarm system provide the appropriate tools to do this.

Q 33 Please indicate why the fire service savings figures are based on 2000 costs and not more recent figures, and the assessment the Department has made of the trend in fire service costs over the last three years.

Q33a: For the purposes of the RIA, we used figures for the year 2000 as at the time of preparing the Assessment. These were the most up to date published figures available. Use of these figures was consistent with other available data sources used for the whole of the RIA.

Q33b: We use the statistics and assessment prepared by the Chartered Institute of Public Finance and Accounts and published in *Fire Service Statistics Report* (current version 2003). Between 2001/2 and 2003/4 Fire Service Expenditure has increased by 13.2 %. As noted above, for consistency purposes in calculating the RIA we have used figures for 2000.

Q 34 Please indicate how the potential savings to business from reductions to the incidences of false alarms has been calculated.

The calculation takes the number of false alarms recorded as due to apparatus and applies to it known proportions of small premises (as defined by the Small Business Service). This provides figures for large and small premises to which our estimates of average costs of a false alarm as noted in the RIA are applied. Regrettably, statistics on false alarms do not record the size of the premises and although we believe, from discussions with the fire service, that a proportionately higher percentage of false alarms arise from larger premises than suggested by the straightforward split used for the calculation it is not possible to quantify this from available data. Consequently we have taken the costs and savings resulting from apportioning as indicated above as a cautious estimate which we think is towards the lower end of the likely actual costs and potential benefits.

Q 35 Please indicate the basis for the assumption that direct enforcement action by the fire authorities, rather than as third parties consulted by those administering other regimes, will reduce false alarms. Does the Department consider that the number of enforcement actions is likely to increase?

As the enforcing authority, the Fire Service will be able to take direct action against the person responsible (including maintenance contractors) for premises to which they are called as a result of repeated false alarms and not need to rely on a third party to take action when this may not be amongst the third party's priorities and that third party may not have powers to take action.

We do not envisage any significant increase in prosecutions. Historically the existence of the power is usually sufficient to persuade people to take action to address problems and the fire service operates on the basis of the enforcement concordat so formal enforcement action would be a last resort.

Q 36 Please indicate the analysis the Department performed on the likely costs to the Fire Authorities of risk-based inspections. Are these costs likely to be higher than certification work if more judgement is needed on the part of inspecting officers?

The fire authorities have already moved towards a risk assessment based regime independently of the reform following the introduction of the Fire Precautions (Workplace) Regulations 1997. Familiarity with the requirements is therefore already high. The level of judgement remains principally the same and we do not expect the new regime to be more resource intensive in this regard. New fire certificates are issued on the basis of checking the risk assessment made under the 1997 Regulations and the precautions put in place as a result. Should the risks change then the precautions required by the revised risk assessment take precedence over the fire certificate – which must give way and be altered. Consequently, existing enforcement activity – even for fire certificated premises is already based on assessment of actual risk. The introduction of the new regime will not alter this.

Q 37 The RIA states that the number of inspections is not expected to change and nor are the resources available. Please indicate the basis for this assumption.

We do not expect the number of inspections to change as the result of the introduction of the Order. The Fire Service already carries out inspections on a broad range of premises - including those operated by the self-employed and the voluntary sector as enforcers, statutory consultees or agents of other authorities.

However it is for Fire Authorities themselves to determine the resources they will allocate and the number of inspections carried out in order to properly exercise the statutory functions placed on them. This would occur anyway regardless of the introduction of the Order. We have calculated the Impact Assessment on the basis of the status quo.

Q 38 Please indicate how any increase in costs to the Fire Service are to be funded, since fire authorities will no longer levy certification charges.

ODPM does not expect there to be an increase in the overall number of inspections as a result of the Order and so we do not expect increases in inspection costs to the fire authorities. Under the Fire Precautions Act 1971, only the cost of administration (such as the physical production of plans of premises showing where fire precautions are located) may be recovered. As the work on preparation of certificates will no longer take place, the costs also do not arise and the effect is cost neutral in real terms.

The move to a more preventative approach was a consideration in the 2000 and 2002 Spending Reviews which resulted in a real increase in provision. The Formula Spending Share that determines the distribution of funding between local fire authorities also includes factors relevant to fire prevention. In 2004/05, fire authorities received an average increase in grant of 4.2% and no authority received less than a 3.5% increase.

The Committee will also wish to note that the reform of fire safety law forms a part of the wider modernisation of the fire service. The changes under the modernisation programme and the associated agreement on pay and terms and conditions will have significant financial ramifications. There will be increased costs to fund the pay award and potentially some aspects of the modernisation agenda - including the increased emphasis on prevention. However, substantial savings are also available, for example through better targeting of resources to match risks, and through regional collaboration. Overall, the Government believes that the costs and savings of these changes should balance across the Spending Review 2002 (SR2002) period (2003-4 to 2005-6). Fire authorities, through the Local Government Association, have said that this is achievable.

Q 39 The Committee notes that the removal of certification revenue from fire authorities appears to represent a net loss to them. Please indicate whether this revenue is to be made up from other sources. If fire authorities are to conduct the same number of inspections for the same resources, is there any risk of a shortfall?

The charges made for issue of a fire certificate relate only to the administrative task of preparing the certificate. They do not include matters such as inspection time. As fire authorities will no longer be carrying out

preparation of certificates these costs will no longer arise. Rather than a shortfall, we expect that fire inspectors will have more time to inspect rather than being desk-bound preparing detailed certificates.

Q 40 Please indicate whether the figures for savings to businesses from a reduction in false alarms assume that all false alarms occur during the working day, and the analysis (if any) which has been made of the costs of false alarms occurring outside normal working hours.

Q 41 What effect would incorporation of this analysis have on the estimated savings to businesses from fewer false alarms?

In preparing the figures we had due regard to the time of day when false alarms from apparatus occur.

15 – 18% of false alarms from apparatus occur outside of normal working hours (based on advice from the fire service). Reliable statistics are not held as to whether premises at which false alarms occur are in use. However, advice from the Fire Service is that most false alarms from apparatus which occur outside normal working hours arise from premises which are in use (such as hospitals and care home). The number of calls from unoccupied premises is very small.

We have taken this into account in considering the costs and savings and believe that the proportion of false alarms which occur in premises which are unoccupied is sufficiently small as to be of no real effect on the calculations given the margins provided through rounding - and that we have not been able to quantify (and so include in the calculation) business loss for small premises.

Q 42 If the effect of the RRO is to reduce the number and seriousness of fires, the insurance industry should have to pay out less in claims and so premiums for business should reduce. Please indicate whether the Department expects premiums to fall as a result.

The setting of premiums is a matter for the insurance industry. In assessing the impact we have not assumed that the insurers will reduce premiums - they have pointed out to us that as fire is only one factor: flood, theft and arson etc are also to be taken into account. The assumption cannot be made that premiums will automatically fall as the result of our proposals.

Q 43 If premiums do not fall, is there not a risk of a double cost to business of the same insurance premiums and additional compliance costs?

ODPM do not anticipate an increase in compliance costs where a business complies with the current law. In the case of a business who does not comply with the current law, it is required to take the necessary action in order to ensure compliance to the required standard . The cost of bringing a non-compliant business up to the required standard will be incurred under the law as it stands now irrespective of the proposed new law. Therefore there is no new burden to business in terms of compliance with the law.

Q 44 Please state the evidence for the Department's assumptions made in respect of the costs of purchasing new guidance and familiarisation with it by businesses?

A guidance document will cost £12 to buy (ODPM is the publisher and that is the price we have set). It will also be available free of charge on the internet. As shown at Annex D of the RIA, we estimated that it will take a manager or administrator of a business not compliant with the obligation to undertake a risk assessment , 4 hours or half a working day, to prepare a risk assessment. Using the labour cost per hour of £22.80 the figure of £91.20 is arrived at. We took account of the responses to the consultation exercise which suggested that in some cases a risk assessment might take only 2 hours and based the calculation upon the longer time which we thought reasonable. Staff training we estimated to take an average of two hours : this assumption was based upon a selection of staff members being trained as `fire-marshals' for up to half a day and a general lower level of training for remaining staff lasting perhaps 1 hour. At a labour cost of £15 per hour this gives a total of £30 per staff member.

These figures have been developed in consultation with business representatives and the Small Business Service.

Q 45 Please indicate whether the Department has considered the need for ongoing advertising costs, to avoid a return to the current low level of awareness of fire safety regulations amongst business.

We are working not only towards the initial launch of the RRO but are also looking at the ongoing need to keep awareness levels high through on-going publicity. Consideration of the means to achieve this is being carried out in conjunction with stakeholders including business representatives.

Q 46 Please indicate whether, in the Department's view, articles 9 to 22 could be amended otherwise than in implementation of European obligations, in particular by imposing additional requirements.

ODPM agrees that articles 9 to 22 could be modified otherwise than in implementation of European obligations (assuming the modifications are compatible with European law), and this might lead to the imposition of additional requirements. However, articles 9 to 22 could only be modified insofar as the modifications related to general fire precautions; article 5(4) provides that article 8 to 22 only require the taking or observance of general fire precautions in respect of relevant persons, and it is not proposed to designate article 5(4) as a subordinate provision.

The point made in the explanatory statement (paragraph 365) is that in practice, the fact that these provisions implement European obligations would act as an external control - since articles 9 to 22 are included in the draft Order primarily to ensure that the relevant directives are fully implemented, any changes to the articles would, in practice, be prompted by changes to those directives.

Q 47 Please indicate the potential changes to article 45 which are envisaged, and whether it would in practice be possible to avoid any potential conflict in the drafting of subsequent Buildings Regulations.

There are no current proposals to change the substantive requirements for consultation. However, the designation of Article 45 as a subordinate provision would facilitate movement of the requirements into the Building Regulations when the latter are next amended. This will allow us to ensure, in the future, that a consistent approach to consultation will be maintained within the most relevant Statutory Instruments.

I trust this will be of assistance to the Committee. If there is any further matter or any point of clarification required please do not hesitate to contact me. In addition, you noted by e-mail that should the Minister wish to amplify or clarify any points made in oral evidence this would be acceptable to the Committee. The Minister has asked that I should do so and I will send details by separate letter.[4]

2 July 2004

4 Printed at Ev 33

Appendix E

Letter from the Engineering Construction Industry Association to the Chairman of the Committee

Proposal for the Regulatory Reform (Fire Safety) Order 2004

I am aware that you will be taking oral evidence on the above from Phil Hope MP (Parliamentary Under-Secretary of State, Office of the Deputy Prime Minister) on 29 June.

ECIA is an employers' organisation that represents companies involved in the construction and maintenance of large and complex process plant such as oil refineries, power stations and chemical plants. Fire safety is an important issue in such environments.

We contributed to the earlier consultation on the reforms and have examined the proposed reform order that has emerged. The existing regime is manifestly complex and confusing and we wholeheartedly welcome the proposed simplification of it. However, we have some detailed concerns which we think could usefully be addressed and clarified if the new regime is to achieve its full potential. These concerns are relevant for all workplaces and not just engineering construction. They are explained in the attached annex.

I do hope that you will find the attached briefing useful.

18 June 2004

Annex

Proposal for the Regulatory Reform (Fire Safety) Order 2004: comments from the Engineering Construction Industry Association

1. The need for practical guidance

The proposed law is new and will create uncertainties about what it requires in practice. Such uncertainty provokes over-reaction amongst those anxious to assure compliance and this may well be amplified by the contribution of the fire safety consultancy industry.

Clear messages in the form of guidance are needed to discourage both under and over-reaction. The current proposals are unclear what will be provided in this respect.

2. Alterations Notices: when do they apply?

The criteria defining whether or not a company should be under an Alterations Notice regime are not clear. There is some danger of inconsistency across different enforcement agencies. This would impact especially on companies who work in different geographical regions.

There is a fear that placing companies under an Alternations Notice regime may come to be used as a substitute for inspection in companies, when an Alterations Notice is not appropriate on the grounds of potential risk.

Clarification of Alterations Notice criteria would reduce both the above concerns.

3. Alterations Notices: what changes should be notified?

It is proposed that 'significant' changes should be notified to the relevant authority. There is much uncertainty what constitutes significant .

Uncertainty is likely to provoke excessive notification to the authorities by companies anxious to assurance compliance. This could create a bureaucratic burden disproportionate to the risks involved.

Clarification of the meaning of significant would reduce these concerns.

Appendix F

E- mail from John McDonnell MP, Chair, RMT Parliamentary Group, to all Members of the Committee

Proposal for the Regulatory Reform (Fire Safety) Order 2004

I am writing to draw your attention to the concerns of the RMT Parliamentary Group about 'Regulatory Reform (Fire Safety) Order 2004'.

In particular we are concerned that this order will lead to the ending of the statutory requirement concerning minimum Fire Safety requirements in London Underground and Railway Stations, which would then become a matter of risk assessment for the Secretary of State.

These regulations were introduced in the wake of the Kings Cross disaster for good reason and the RMT Parliamentary Group is concerned that there should be no downgrading of the standards of fire safety on the London Underground, especially when the present danger of a terrorist threat is considered.

I have attached a copy of my letter to the Chair of the Regulatory Reform Committee, for your information.

12 July 2004

Annex

Letter from John McDonnell MP to the Chairman of the Committee

I am writing to you as Chair of the Regulatory Reform Committee to raise with you concerns with regards to the Regulatory Reform (Fire Safety) Order 2004 which I understand is presently under consideration by your committee.

My concerns specifically relate to the fact that if passed in its current form the Order will revoke the Fire Precautions (Sub-Surface Railway Stations) Regulations 1989.

As you will be aware these regulations were introduced as a direct result of the Kings Cross Fire in November 1987 and set out minimum standards of fire precautions that are to apply at sub-surface stations, the special perils of which were recognised by the Board of Trade as far back as 1904 when they specified certain requirements in relation to the construction of the underground railways.

The regulations were brought into force under the powers conferred upon the Secretary of State within Section 12 of the Fire Precautions Act 1971.

The regulations have been applied at 115 London underground stations and require stringent and wide-ranging fire fighting and precautions measures, including means of escape, means of fighting fire, minimum staffing levels and staff instruction/ training, means of detecting /warning of fire and fire resistance.

Your will also be aware these regulations arose from the deficiencies identified by the Fennell Report into the Kings Cross Fire.

The effect of the order will be to remove these minimum safety standards and instead allow management the freedom to risk assess fire safety measures.

It is unclear to me and I am sure London Underground users and employees how such a measure will improve fire safety on the Underground and indeed there are bound to be fears that without minimum standards corners will be cut and safety compromised.

In this respect has the government been able to explain why it is now necessary to move away from the recommendations in the Fennell Report and why the regulations that parliament deemed so essential in 1989 are no longer valid?

I therefore believe that there are strong arguments for ensuring that the Sub-Surface Regulations automatically transfer over as subordinate legislation to Article 24 of the new Regulatory Reform Order and, therefore, retains the current minimum requirements that apply to sub-surface railway stations.

If this is not possible, however, I understand the existing power to make specific regulations under Section 12 of the Fire Precautions Act will be retained within Article 24 of the new Regulatory Reform (Fire Safety) Order and the government should use these powers to immediately to introduce regulations identical to the revoked Fire Precautions (Sub-Surface Railway Stations) Regulations 1989.

I would be happy to discuss this matter with you or your committee if you feel that would be helpful.

12 July 2004

Appendix G

Further letter from the Clerk of the Committee to the Office of the Deputy Prime Minister

The Committee has asked me to seek further information from the Department relating to the proposed revocation of the Fire Safety (Sub-surface Railway Stations) Regulations 1989 and other matters relating to regulations made under section 12 of the Fire Precautions Act 1971 ("the 1971 Act"). The Committee's questions are as follows:

Q 48 What plans does the Department have to make regulations under article 24 of the draft Order to provide for fire safety in sub-surface railway stations?

Q 49 If such regulations are to be introduced, to what extent will they replicate the existing Fire Safety (Sub-surface Railway Stations) Regulations 1989? If they are to vary substantially from the 1989 Regulations, please explain the reason why.

Q 50 How are the recommendations of the Fennell Report into the King's Cross Underground Fire of November 1988 to be continued under the proposed Order?

Q 51 What other regulations made under section 12 of the 1971 Act are to be revoked by the proposed Order? To what extent is it proposed to make identical provision by regulations under article 24 of the proposed Order? If the provisions are not to be repeated, or are to be varied, please state the reason why.

Q 52 Section 3 of the Fire Precautions Act 1971 has never been commenced. What other legislative provisions in the legislation to be repealed or revoked are not presently in force?

I would be grateful to receive your response to the above questions not later than **Wednesday 14 July**.

13 July 2004

Appendix H

Letter from the Office of the Deputy Prime Minister to the Clerk of the Committee

Thank you for your letter of 13 July 2004. Answers to the questions raised by the Committee are given below.

Q 48 What plans does the Department have to make regulations under article 24 of the draft Order to provide for fire safety in sub-surface railway stations?

The ODPM has no plans to make separate regulations regarding fire safety in sub-surface railway stations. Having consulted, with enforcers and others, ODPM is of the view that the provisions of the draft Order, when taken with the Railway (Safety Case) Regulations 2000, continue all necessary protection implemented by the Fire Precautions (Sub-surface Railway Stations) Regulations 1989.

Q 49 If such regulations are to be introduced, to what extent will they replicate the existing Fire Safety (Sub-surface Railway Stations) Regulations 1989? If they are to vary substantially from the 1989 Regulations, please explain the reason why.

In the light of the answer to question 48, question 49 does not arise. However the Committee will wish to note that Article 28 would permit the 1989 Regulations (or any element of them) to be replicated, if the Government were to be persuaded there was a case for doing so.

Q 50 How are the recommendations of the Fennell Report into the King's Cross Underground Fire of November 1988 to be continued under the proposed Order?

The provisions of the 1989 Regulations which relate to provision of general fire precautions and mitigation of spread of fire are dealt with by the draft Order - notably Articles 9 to 22. The1989 regulations are highly prescriptive although they do allow some discretion to the enforcing authority. Recommendations are also implemented through the Railway (Safety Case) Regulations 2000 (as amended in 2003) - which are also a risk based regime.

As noted in reply to question 48, ODPM is of the view that all necessary protection provided by implementation of Lord Fennell's recommendations - by means of the 1989 Regulations - would (subject the comment made in the final paragraph of this answer) be continued by the effect of the draft Order and the 2000 Regulations.

Given that the matter has appeared in the press, with particular relevance to staffing levels, attention is drawn to Regulation 10(4) (shifts to be arranged so two people are at work if the public are present) as affected by Regulation 12(1) - which allows that requirement to be relaxed by the fire authority. The requirement under the 1989 regulations is therefore not absolute.

The requirement for there to be sufficient staff available to implement the fire safety arrangements (including evacuation) is carried forward by Articles 11 (Fire safety arrangements), 15 and 18 of the draft Order. The Committee may wish to particularly note 15(1).

However, in considering the representation made and the question raised by the Committee, we have noted that full enforcement of the 2000 regulations would be limited by Article 47. This is not what we had intended and in discussion with the HSE ODPM will make appropriate amendments to the article to ensure all matters continue to be reflected in the safety case - so that any deficiency in the fire precautions measures will continue to be grounds for action to be taken in relation to the licensing of the railway undertaking.

Q 51 What other regulations made under section 12 of the 1971 Act are to be revoked by the proposed Order? To what extent is it proposed to make identical provision by regulations under article 24 of the proposed Order? If the provisions are not to be repeated, or are to be varied, please state the reason why.

Elements of the Fire Precautions (Workplace) Regulations 1997 are deemed to be made under section 12 of the Fire Precautions Act 1971. It is proposed that these regulations will be revoked and replaced by the draft Order. The provisions are implemented on the face of the draft Order itself and so we have no plans for regulations under Article 24.

Q 52 Section 3 of the Fire Precautions Act 1971 has never been commenced. What other legislative provisions in the legislation to be repealed or revoked are not presently in force?

Section 4
Section 12(11)
Section 16(1)(b)
Section 16(2)(b)
Section 18(1) - the prospective insertion of "and cause premises to be inspected" made by the Fire Safety and Safety of Places of Sport Act 1987.
Section 18(3)

The Committee may also wish to note that Smoke Detectors Act 1991 has not been commenced.

14 July 2004

Oral evidence

Taken before the Regulatory Reform Committee

on Tuesday 15 June 2004

Members present:

Mr Peter Pike, in the Chair

Mr Russell Brown
Mr Mark Lazarowicz
Mr John MacDougall
Dr Doug Naysmith

Memorandum from the Fire Brigades Union

1. Introduction

1.1 The Fire Brigades Union (FBU) is the primary fire service trade union in the United Kingdom. We represent over 95% of all serving fire fighters and fire control staff up to the rank of Assistant Chief Fire Officer employed by local authority fire services throughout the UK. Our members provide emergency fire and rescue cover and protection for the general population and they deal daily with the many and varied incidents involving fires and rescues and assistance to the general public that they are called to.

1.2 For many years the FBU has also been and remains a main and often leading player in the promotion of fire safety and fire prevention measures both through the education of the communities that our members serve in the dangers of fire and through the enforcement of fire safety legislation by the fire services within the UK. We are firm believers in the old adage that prevention is better than cure and have always welcomed the involvement of our members in promoting fire safety measures and enforcing fire prevention law.

1.3 Fire services in the UK have been involved in the enforcement of fire safety legislation since 1961, when they were first given the duty to issue fire certificates in factory premises falling within the remit of section 40 of the Factories Act 1961. The Factories Act 1961 was a consolidation of three previous Factory Acts and came about as the direct result of the Keighley Mill fire in Yorkshire in 1956 where eight workers lost their lives in a fire which engulfed a multi storey woollen mill building. Since that time and sad to relate most of the subsequent fire safety legislation currently in force in the UK has been introduced as a result of fire tragedies.

1.4 As a result of the lengthy involvement of our members in fire safety legislation we have developed a deep understanding of fire safety law and the matters that it should address. It is therefore the experiences of our members over the last 43 years that we bring to the discussions regarding certain elements of the proposed Regulatory Reform (Fire Safety) Order 2004 that concern us.

1.5 We would want the members of the Regulatory Reform Committee to understand that the FBU fully supports the principles underpinning the proposed Regulatory Reform (Fire Safety) Order 2004. The Order originally started life as the FBU's Fire Safety Bill. That Bill which received approval for a Second Reading in 1996 but that parliamentary process was subsequently overtaken by the outcome of the 1997 General election has undergone a long metamorphosis to now appear as the Fire Safety Order.

1.6 The proposed Regulatory Reform (Fire Safety) Order 2004 has been seven years in development and the FBU has been party to all the Committees which have sat over that period to consider the proposals initially for a Bill and then an Order. We have not missed a meeting of any Committee which met to discuss this matter and our representation upon those Committees has always been completely consistent.

1.7 Our aim in presenting evidence to the Regulatory Reform Committee is to ensure insofar as we are able that England Wales will have good fire safety law which will successfully replace that which exists without lessening the present standards of safety and is capable of surviving for at least another thirty years. To that end we wish to present those matters which we believe require further consideration and where we have been unable to convince those responsible for drafting the Order in the Office of the Deputy Prime Minister of the need to address those issues, or those issues that we believed were to be addressed within the Order, but have now disappeared from it.

1.8 We shall now set down below those matters of concern to us which we believe that the Regulatory Reform Committee should give consideration too. We would also welcome the opportunity to appear before the Regulatory Reform Committee to explain our concerns.

2. Enforcement of the Regulatory Reform (Fire Safety) Order 2004

2.1 Article 26 deals with enforcement of the Order and places a duty upon every enforcing authority to enforce the provisions of the Order and any regulations made thereunder and may appoint inspectors to do so. In performing that duty the enforcing authority shall have regard to such guidance as the Secretary of State may give it. Article 26 therefore mirrors quite closely the provisions of section 18 of the Fire Precautions Act 1971 which are currently in force.

2.2 However, simply placing a duty to enforce the Order without providing either a duty to carry out inspections, or to develop an enforcement programme to do so, is not sufficient in our opinion to preserve the current level of public safety or equal the current requirements of the Fire Precautions Act 1971 insofar as it relates to the issue of fire certificates. In section 5(3) of the 1971 Act the enforcing authority is under a duty to consider whether or not in the cases of premises which qualify for exemption from holding a fire certificate to grant an exemption and if they do not so agree they must inspect the premises and commence the fire certification process.

2.3 The issue of fire certificates or the grant of exemptions from fire certification under the Fire Precautions Act 1971 also gave clear and measurable indication of the enforcement activities of the fire authorities. Once this process is removed then no equivalent measure or indeed target will exist and public confidence in the Order could well be jeopardised. It should be noted that there are no national targets in force or proposed that we are aware of relating to the fire safety enforcement activities of fire and rescue authorities once the Best Value Performance Indicator (BVPI) for the issue of fire certificates is withdrawn.

2.4 This matter was discussed at length in the Fire Safety Legislation Sub Committee of the Fire Safety Advisory Board (initially created under the auspices of the Home Office and finally removed by the Office of the Deputy Prime Minister). The issue of public confidence in the Order and the maintenance of public safety once fire certification was removed was a major concern. It was agreed that if public confidence in the effectiveness of the Order in ensuring continuing public safety once fire certification was removed was to be ensured then this would rest entirely upon the level of enforcement activities of the enforcing authorities.

2.5 It was proposed that to ensure public confidence in the effectiveness of the Order in ensuring continuing public safety once fire certification was removed the enforcing authority should be placed under a duty to institute, develop and maintain an enforcement programme. The enforcement programme would include details of how the authority might determine the frequency with which it will inspect premises to which the Order applies in order to monitor and encourage compliance with the law. It was also proposed that the enforcement programme in terms of frequencies and numbers of inspections might be made public so that the general public could see that the fire safety activities of the enforcing authority were properly focused and not diminished.

2.6 This proposal was circulated as part of the Consultation Paper entitled "A consultation document on the reform of fire safety legislation" issued by the Office of the Deputy Prime Minister (ODPM) in July 2002. In the subsequent responses received by the ODPM to this proposal 26 respondents were in favour of the proposal and there was not one opposed to it. It was assumed therefore that a duty would be contained in the Order which would require an enforcing authority to develop and publish an enforcement programme as described in paragraph 2.5 above. This proposal, for which there is considerable support, has not been implemented within the Order.

2.7 We believe that if such a provision is not made within the Order then there is a risk that the Order will fail by virtue of section 3(a) of the Regulatory Reform Act 2001 as it removes a necessary protection currently enjoyed. We recommend therefore that a duty as described within paragraph 2.5 above be incorporated into the Order at this time.

3. Definition of Escape

3.1 We are concerned for the following reasons that the Order fails to define the term "escape".

3.2 As a result of problems experienced by fire authorities in enforcing the Fire Precautions Act 1971 regarding the termination of means of escape routes provided from premises, the 1971 Act was amended to define the term "escape". The reason for this was simple, the 1971 Act initially dealt with escape from premises which were defined as "buildings" or "parts of buildings" so once the person escaping from a fire was at an exit from a building they were deemed to be safe. In real life however, it was found that on occasion some exits which afforded a means of escape in case of fire from the building they served often led into an enclosed courtyard or area from which there was no further escape.

3.3 In those instances the fire authority was powerless to impose any further requirements upon the owner or occupier as their powers ceased at the external walls of the building. This anomaly was removed from the 1971 Act by the following definition which was inserted into the 1971 Act as section 5(5) of that Act by virtue of section 4(2) of the Fire Safety & Safety Of Places of Sport Act 1987:

> *In this Act "escape", in relation to a premises means escape from them to some place of safety beyond the building which constitute or comprises the premises and any area enclosed by it or enclosed with it; and accordingly for the purposes of any provision of this Act relating to means of escape, consideration may be given to, and conditions or requirements imposed as respects any place or thing by means of which a person escapes from premises to a place of a safety.*

3.4 The definition of "premises" in the Order is wider than that of "premises" in the 1971 Act and means "any place". It can therefore be argued that there is no need to define "escape" for the purposes of the Order however, for the avoidance of doubt and to remove any possibility of the problems experienced with the 1971 Act being replicated we would recommend that it is. A suggested wording is set out below:

> *"escape" in relation to premises means escape from them to some place of safety beyond the premises and any area enclosed by it or enclosed with it; and accordingly for the purposes of any provision of this Order relating to means of escape, consideration may be given to any place or thing by means of which a person escapes from premises to a place of a safety.*

4. Article 13 and Article 14

4.1 In articles 13 and 14 of the Order we see that the words "where necessary" are inserted in relation to the duties of the responsible person in respect of:

(a) the provision of fire-fighting equipment (article13(1)(a)), and

(b) ensuring that routes to emergency exits from premises and the exits themselves are kept clear at all times (article14(1))

We believe that this caveat of "where necessary" inserted in relation to these specific duties to be placed upon the responsible person is both unnecessary and constitutes a lowering of existing standards and the removal of an existing protection. We also believe that this caveat is outside the requirements of the Workplace Directive (89/654/EEC). We further believe that by doing so Section 3(1)(a) of the Regulatory Reform Act 2001 is also breached.

4.2 We shall deal first with the impact of the caveat of "where necessary" upon the application of the Workplace Directive which was previously replicated complete with this caveat in relation to fire-fighting equipment within the Fire Precautions (Workplace) Regulations 1997 (as amended). We complained about this at the time of the introduction of the 1997 Regulations, but were told that it could not be avoided as the Home Office was under pressure to introduce the Regulations which were nearly four years behind the specified date for introduction to avoid infraction proceedings by the European Commission.

4.3 In the Workplace Directive both the supporting Annexes to it (which set down minimum safety and health requirements for workplaces used for the first time or already in use at the time of the Directive) set down the same requirement in the case of fire-fighting equipment which reads as follows;

> *Depending on the dimensions and use of the buildings, the equipment they contain, the physical and chemical properties of the substances present and the maximum potential number of people present, workplaces must be equipped with appropriate fire-fighting equipment and, as necessary, with fire alarms and alarm systems.*

4.4 We believe that it is clear from the Workplace Directive that workplaces **must** be equipped with some form of fire-fighting equipment that is appropriate to deal with the risks present in the workplace. What is at question is what the appropriate firefighting equipment is, not that it should be provided at all. It should also be noted that historically all UK based fire safety legislation has always required the provision of fire-fighting equipment in workplaces and similar premises for the safety of both the person and the mitigation of the effects of fire.

4.5 By adding the caveat "where necessary" in relation to firefighting equipment the responsible person may, as a result of his risk assessment, choose not to provide any such equipment at all and indeed this has happened already with the 1997 Workplace Regulations. In view of the fact that the Order removes the fire safety elements of a number of local Acts that contain quite clear and unambiguous requirements for the provision of suitable fire-fighting equipment we believe strongly that a necessary existing protection would be removed which would breach Section 3(1)(a) of the Regulatory Reform Act 2001.

4.6 In relation to the matter of the maintenance of escape routes and emergency exits from obstruction and available for use we are even more astonished by the insertion of such a caveat. Article 6 of the Workplace Directive states, *inter alia*, the following;

To safeguard the safety and health of workers the employer shall see to it that;

- *traffic routes to emergency exits and the exits themselves are kept clear at all times*

This requirement is then replicated in both Annexes to the Directive. We are at a loss therefore, to understand how the ODPM have come to the conclusion that this requirement which is also a staple and fundamental requirement for UK based fire safety legislation can be qualified by the term "where necessary". It really is a recipe for a disaster.

5. Article 2—Meaning of Relevant Person

5.1 We are unhappy that the Order effectively bars fire-fighters from receiving its protection by excluding them from the definition of a "relevant person". Whilst we can understand that the responsible person may not be placed under a duty of care with regard to their safety whilst fire-fighting as that is the responsibility of their employers and managers, however we certainly believe that a responsible person should be placed under a duty of care:

(a) to ensure that if fire-fighters attend their premises for any non emergency reason they are treated exactly the same as any other employee from an outside employer, and

(b) to offer any assistance that he reasonably can in terms of advice, information or specialist equipment or personnel whilst they are attending an emergency incident at his premises, and

(c) to ensure that if he introduces hazardous materials or substances into his premises for the first time or which are likely to significantly increase the existing risk of fire or explosion he advises the fire service of the presence, location and quantity of such materials, and

(d) to ensure that if he propose alterations to the layout of the premises that may affect the efficiency or effectiveness of any fire safety measures provided for the assistance of the fire service that he consults them before doing so.

5.2 We would ask the Regulatory Reform Committee to consider this issue and to seek to ensure that fire-fighters receive the protection of the Order insofar as they consider it is proper for them to do so.

6. Article 49—Application to the Crown and to the Houses of Parliament

6.1 The FBU remains deeply concerned at the continuation in the Order of the principle of Crown Immunity from prosecution and the principle that Crown premises should be the subject of a separate inspection regime by a separate group of fire safety inspectors that are effectively employed by the government to those fire safety inspectors employed by the local fire and rescue authority whose members will then have to fight any fires or effect any rescues in those premises.

6.2 We accept that it is the stated intent of the government to remove this outdated anomaly across the whole range of safety legislation when parliamentary time allows however, we see no Bill or other statutory proposal emerging on the political horizon that would indicate to us that this is likely to happen very soon.

6.3 This issue has been discussed at a number of levels including the Fire Safety Legislation Sub Group of the Fire Safety Advisory Board of the ODPM where the proposal to retain the principle in the draft Fire Safety Order was rejected unanimously by the members of the Group. This move was then endorsed by the full membership of the Fire Safety Advisory Board. We understand that the real problem however rests within government where it has not been possible to decide whom should assume overall responsibility for any contraventions of fire or general safety law if Crown Immunity is withdrawn.

6.4 We believe that the Regulatory Reform (Fire Safety) Order 2004 offers the first significant legislative opportunity to remove this outdated and outmoded practice. Clearly if government and parliament are determined to set their own houses in order and to seek a parity of legislative involvement with those in the public and private sectors upon whom they intend to impose the Order then now is the opportunity to demonstrate that commitment.

May 2004

Witness: **Mr Glyn Evans,** Fire Safety Advisor, Fire Brigades Union, examined.

Q1 Chairman: Good morning, may I welcome you to this morning's session of the Regulatory Reform Committee. We are here to scrutinise the proposals for the Regulatory Reform (Fire Safety) Order 2004 which the Government laid on 10 May. The Committee's job is to assess the proposal for the order against tests laid down in the Regulatory Reform Act and in our Standing Order. At the end of the process we will recommend whether the draft Order should be laid before Parliament unamended, whether it should be proceeded with or whether it should not be proceeded with. We have received a number of submissions on the proposal. We have decided to take oral evidence from those who have made submissions to us and in a fortnight's time we will be taking evidence from the Parliamentary Under-Secretary of State in the Office of the Deputy Prime Minister. Phil Hope will be appearing before us on 29 June. I think that clears the procedures. Could I welcome you, Mr Evans. You are very welcome. We have received your papers but I believe that before we go on to questions you might like to make a few opening comments.

Mr Evans: Thank you very much, Chairman and members. I am here today representing the Fire Brigades Union. Sometimes our reputation precedes us but I wish to assure the Committee that we are here today as a long-term player in the fire safety field, in the field of fire safety legislation. Our only agenda here today is to try as far as possible with yourselves to ensure that what comes out of the Regulatory Reform Order is good law in England and Wales and improved fire safety for the general public, business and, indeed, for the safety of fire fighters in England and Wales. That is our only concern and I emphasise that to you.

Q2 Chairman: Thank you. That is a very positive statement and we very much welcome you on that basis. Could you give us the union's views on the way the process has been conducted so far?
Mr Evans: The process has been an extremely long metamorphosis. The question really of a Fire Safety Bill has been going on from the early 1990s. It was overtaken by events in Europe with the introduction of the Framework and Workplace Directives and the requirements that those placed. By 1997 the question of a Fire Safety Bill was very much to the forefront of the thinking of the incoming government and of course it gradually translated into the order that you see before me now. So it has been a very long process. It has been through many, many committee stages, initially with the Home Office, then the Department for Environment, Transport and the Regions, then DTLR, and now finally the Office of the Deputy Prime Minister. So the arguments, the proposals and the principles upon which the order is based are, shall we say, well exercised and have been well argued over the years. I think there has been a long delay between, shall we say, the completion of the final ODPM Committee's work on the order itself and its presentation now. It has been over 12 months since the ODPM Legislative Committee last met. To a certain extent it has been overtaken by events which occurred with the modernisation agenda for the fire service, the Fire and Rescue Services Bill, the Framework Document, the Government's White Paper on the Fire Service, so there has been a sort of time stagger, I suppose, of around 12 months between the time the Committee commented and the time we are at now, but the consultation process has been well undertaken, I think.

Q3 Chairman: Subject to the points you have put in your submission to us, do you think the Department has taken appropriate account of the issues that you raised in your response to the consultation?
Mr Evans: I think they have taken into account many of the issues. The issues we put to you in our submission, Chairman, are those issues which perhaps we feel we have failed to convince the ODPM that they should investigate further.

Q4 Dr Naysmith: Good morning. Perhaps we could explore one or two of those points. In your response to the consultation you wanted the proposed legislation to retain a requirement that building plans should, where appropriate, be incorporated into a fire safety risk assessment. Are you happy that this concern has now been addressed?
Mr Evans: I think the quick answer is no, not entirely. Could I give the Committee a quick background of how we came to our submission to the consultation paper?

Q5 Dr Naysmith: If you could say why you are not happy.
Mr Evans: Yes. We had four gatherings, which were extremely well attended and all were serving fire safety officers. One of the things they were particularly anxious to retain was the principle of plans in terms of risk assessment, both for the protection of the company or the individual on whom the risk assessment requirement fell and also for the maintenance of standards, I suppose, so that people could easily see if something had changed. You will not find anywhere in the order itself a requirement for plans as forming part of a risk assessment. That is of concern to us. In so far as there is no stated requirement, then, no, that recommendation has not been met. It may be that a fire and rescue authority, if they were to issue an enforcement notice, could ask in complex buildings—a building, perhaps, of this nature, which has many corridors, many staircases, many passages and much to be considered in its fire safety risk assessment—that that risk assessment should be accompanied by a plan. It is a matter of conjecture that will have to be tested in law. We say, "Why do so? Why risk the fact that you have to test something in law, when in fact you could include it now within the purview of the order?" You are effectively replacing the Fire Precautions Act which has served the UK well for 30 years, in which it quite clearly stated a requirement for the provision of plans, and the plan provides a record of the measures provided for the protection of the occupants of a building. The concern we have is that this is not translated through into the Order. There is a potential through legal action to require the provision of plans, but why, we would say to you, do you need for a fire and rescue authority potentially to have to take somebody to law to gain a set of plans which reflects what they have done in their building?

Q6 Dr Naysmith: You say that there is an existing requirement for plans, is that complied with at the moment?
Mr Evans: Yes. All fire certificates that are issued currently by fire and rescue authorities invariably contain a plan which shows in detail the measures that are contained in the building. It is one of the questions we asked in our consultation response: What will happen to these plans? because they are valuable documents. Those buildings which currently hold fire certificates may well show their

fire certificate in the future as part and parcel of their fire risk assessment. They may say: "Look, this is how it was, this is what we have done—it is shown on this plan—and here is our written assessment to cover it" and it can be easily seen, plus can any changes or alterations to the building layout of fixtures and fittings.

Q7 Dr Naysmith: Perhaps that is something we will take up with other witnesses later on. Could I look at another point that when you were consulted you raised, and that is the concern you demonstrated about the removal of specific fire safety protection from local Acts. You asked Ministers to demonstrate that an equivalent standard of fire safety could be delivered via the new proposals. Are you now satisfied that safety levels will be maintained in this respect?
Mr Evans: This to a certain extent, Mr Naysmith, goes into another issue that is within the document, the caveat "where necessary". The Government is dealing with this issue in two ways. Those parts of local acts which impact upon the building construction or the method of design and construction of a building are being dealt with through the Buildings Regulations or are dealt with through the review of a part of the Buildings Regulations which has just commenced with the buildings division. Those requirements in local acts which refer primarily to the provision of means of escape and to fire fighting equipment will be dealt with by the Regulatory Reform Order. In many cases these are finite requirements. A fundamental tenet of our fire safety law since the 18th century has been two fold: that people should be able to get out of a building if it catches fire for any reason; and there should be fire-fighting equipment provided in that building for the occupants to use if it is safe for them to do so, to deal with a small fire before it becomes a big one. Many of the local acts that are listed in the rear of the RRO contain these provisions, but, as I say, they are quite definite provisions. Many of them say, "There shall be adequate means of escape provided; there shall be fire-fighting equipment suitable to the risk." None of them contains the caveat "where necessary". It is a direct requirement. Our concern hinges on this caveat "where necessary". That may seem to the members of the Committee a small issue. It is not. In fact, it is another issue that may well be contested in law, and, once again, we would say that it potentially could lead to a lowering of existing standards. That is the basis of our argument, Dr Naysmith.

Q8 Mr Lazarowicz: You have concerns that the draft order in article 26 places enforcing authorities under a general duty to enforce the order and the regulations made under it. Could you explain in more detail why you think that provision in the draft order is not adequate?
Mr Evans: This is a problem which has a multiple background. The order requires fire authorities to enforce the act. It requires them to act in accordance with such guidance as the Secretary of State may issue. It does not require them to cause premises to be inspected. This is an argument that goes back some considerable time and has its background in the debates that took place around the Bradford City football ground tragedy in 1985. I think it is recorded in the debates about that fire and the inquiry that took place afterwards that concern was expressed that in the 1971 Act there was no requirement for fire authorities to cause premises to be inspected. They had to enforce the law but nowhere did it say they should inspect premises. As a result of that, section 15 of the Fire Safety (Sports Grounds) Act amended the Fire Precautions Act to introduce the words "cause premises to be inspected". It also introduced, if I remember, the words "shall act in accordance with the guidance the Secretary of State has issued." No Secretary of State has ever issued any guidance, nor have they ever introduced section 15 of the 1987 Act. Although "cause premises to be inspected" appears in some copies of the 1971 Act, it has never been enacted. The real reason—and you may very well say, "Well, he would say that, wouldn't he?"—is potentially because it causes government to set a resource allocation for fire authorities. If they are to cause premises to be inspected, then they have to employ the staff to do so. The concerns that we have on the Fire Safety Order is it replicates something that has already been discussed in detail previously following a tragedy. The situation agreed within the committees was enforcement in terms of public assurance on the removal of fire certification. Because when this Order goes through, the Fire Precautions Act 1971 will be repealed and therefore the procedure of issuing fire certificates to buildings will cease, and, whatever one may think of fire certification in terms of it being bureaucratic—and it is—it has been extremely successful and it is well liked by business because it gives them a document which says that their building is safe. In actual fact there are arguments about that because fire certificates tend then to be cast in tablets of stone and you need a more dynamic system. The committee decided that the critical factor in assuring the public was enforcement: the public need to be able to see that fire and rescue authorities who are operating as enforcers for the order are in fact doing that, and that they should prepare and publish their fire safety enforcement programmes. This would not be, it was intimated, any great deal, but would give to the public that they serve an indicator of how they intended to carry out their fire safety enforcement duty and programme. That duty is not replicated or has not been put into the Order that we can see. That is why we have that concern. I emphasise to you, ladies and gentlemen, that it was an issue that was agreed by the whole of the committee that discussed that, which included representatives from business organisations as well.

Q9 Mr Lazarowicz: I can see how a duty to inspect is quite a specific duty which can easily be appreciated and hopefully applied, but you are asking for a duty to institute, develop and maintain

an enforcement programme. Is that not in itself a bit vague? Is there not, as you yourself pointed out in reference to fire certificates, a need to make the legislation more able to deal with change in circumstances? Would a duty accompanied by a guidance code of practice actually achieve the dynamic protection you are looking for?
Mr Evans: It would indeed. I have no difficulties at all with that suggestion. I am saying to you that the general consensus at the time—and, as I said earlier, it was over 12 months ago—was that this was possibly the best way it could be achieved if a general duty were not forthcoming.

Q10 Mr Brown: Good morning, Mr Evans. I know in relation to fire-fighting equipment and emergency exits you made reference to the terminology "where necessary" and I know the FBU have claimed that that could be a recipe for disaster. Do you accept that the proposal is intended to apply rather more broadly than existing legislation, in that it extends fire safety requirements to the self-employed and the voluntary sector as well?
Mr Evans: It is a very interesting question you pose: how wide is the existing law? The voluntary sector would be caught probably. If you are talking about something like, let us say, charity shops, then they are shops and they are caught currently by the FP Act. Because it uses the old definition of shops which is provided in the old Offices, Shops and Railway Premises Act, they would be caught. The question then is: Do they require a fire certificate or not? because a fire certificate steps up, if you like, the fire safety measures that are in the building. There is, however, a section within the Fire Precautions Act which is Section 9(a) which applies to small buildings, buildings where there are not more than 20 employed or not more than 10 elsewhere than on the ground floor (which are the criteria for certification under the 1978 Order, I think it is). They would be caught by section 9(a). Going back to the evidence I gave previously, there are two requirements under section 9 now. One is that there should be adequate means of escape. The other is there should be adequate fire-fighting equipment. There is no caveat of "where necessary". The voluntary sector, from that point of view, is caught. In the other areas, it is hard actually to think of a premises that is not caught by some form of fire safety legislation or another, if it is not caught by the Fire Precautions Act or the Workplace Regulations. Therefore invariably they require the provision of means of escape and fire-fighting equipment. The question in terms of fire-fighting equipment is: "How much and of what type?" It is not: "Should they have it at all?" which is the concern we have about articles 13 and 14. They would indicate that there may be instances when they can have nothing. That is because of the term "where necessary". Our argument is that term does not appear anywhere in the Workplace Directive. I cannot find—and I do not think you will find—the words "where necessary" anywhere in the Workplace Directive. I think you will find that the Workplace Directive is quite specific, in terms certainly of emergency exit routes: that they should be kept clear and unobstructed at all times. In the case of fire-fighting equipment, there is an absolute requirement, we see, for fire-fighting equipment, and, as I say, what is at question is not whether they should have it but what they should have and how much. That depends on the risk assessment the responsible person makes. Does that answer your question?

Q11 Mr Brown: I think it does. Could I just ask you a supplementary to that. Currently, to what extent do you think those who are self-employed and those who operate within the voluntary sector provide sufficient fire protection?
Mr Evans: Yes, I omitted the self-employed. The self-employed, if they are part and parcel of a certified building under the 1971 Act, are caught. I would not say to the Committee that it was a great problem. It does, however, leave the potential for a hole in the cover in a building if the self-employed and the voluntary are not caught by the order. You could, for instance, in a multi-storey building have employed, employed, employed on three floors; self-employed on another floor; employed, employed, voluntary sector, say, on the ground floor, and you would effectively have holes in the legislative fire safety cover. That is the concern we have. There is a need to ensure, particularly in multiple occupied buildings, a continuity of cover that somebody is responsible and somebody cannot hold their hand up and say, "Yes, it is very interesting but we are not going to do it because the law does not apply to us," which might in turn then jeopardise people in other areas.

Q12 Mr MacDougall: Taking you on from that point, I suppose examination should be about how much independence the self-employed and voluntary sectors have in terms of making a decision on the issue of whether or not fire-fighting equipment is required on the premises. What would your opinion be on that issue?
Mr Evans: It depends, I guess, on whether they are simply putting themselves at risk or whether they are putting others at risk. If they are self-employed people but they invite members of the public to their premises for whatever reason—which are covered under the term "relevant persons"—then they owe a duty of care to those persons. I do not think the fact that they are self-employed should necessarily exempt them from the law if they are, if you like, placing at risk a third party. I have to say, Mr MacDougall, I have never, ever found a problem with the voluntary sector. In most cases they are quite anxious to comply.

Q13 Mr MacDougall: I suppose it comes down to the fact of who is the responsible person. At the end of the day, if the responsible person carries out this risk assessment properly and applies its provisions appropriately, will this not in itself ensure that an appropriate level of protection has been put in place?

Mr Evans: It may not, but it will ensure that at least consideration to the problem has certainly been given. If you take the average high street charity shop or voluntary sector, which is, I presume, what you are predominantly thinking about, one guesses that the fire safety measures—of course, depending on the risk generated—would be fairly simple. If they have a front and back door, they have a means of escape, and if they have probably one or two fire extinguishers then probably that would suffice for their risk assessment.

Q14 Chairman: Are there any other points you would like to add that you think we have not asked about? If so, you have this opportunity.

Mr Evans: There is one other issue. I would draw one thing to your attention. It is in article 32(1), which says, "It is an offence for the responsible person to (a) fail to comply with any requirement or prohibition imposed by articles 8 to 21 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". The term "places one or more relevant persons at risk of death or serious injury in case of fire" is a term that is in the Fire Precautions Workplace Regulations but is not a term that you will see in the Fire Precautions Act. It is a term that concerns us because it requires the fire and rescue authority in taking an enforcement action to prove there has been a failure to comply and then that failure to comply has placed one or more people at risk of death or serious injury in case of fire. Our existing fire precautions law, the Fire Precautions Act, does not require the enforcing authority to demonstrate that people have been put at risk, merely that there has been a failure to comply, usually with a fire certificate, which is, I have to say, a very clear cut-and-dried issue: if it shows a fire door on the plan and on inspection there is not a fire door there, then that strictly speaking is an offence. In fact, most fire authorities would simply deal with it by issuing a notice and asking the person concerned, the responsible person, to return the fire door to that position. But they have the option to prosecute in, shall we say, cases where there are quite flagrant breaches of the law and this has happened on occasion. Under the Fire Precautions Act you can actually add a number of offences. You might find there is a list of offences—for instance, failure to maintain fire-fighting equipment, failure to maintain emergency lighting, fire doors removed, issues of this nature—but none of them requires the fire authority then to demonstrate as well that by doing so people have been placed at a serious risk of death in case of fire. I would say to you, ladies and gentlemen, that you should perhaps consider that, whether or not that phrase is necessary, whether or not it is simply necessary for the fire authority to allege there has been a failure to comply with a requirement of prohibition of any article, and let the courts decide whether or not this is of sufficient seriousness to warrant whatever punishment they are going to give or not, as the case may be. But for the fire authority to have to demonstrate that it "places one or more relevant persons at risk of death or serious injury in the case of fire" plus there has been a failure of compliance . . . From our point of view, if there has been a failure of compliance, then by inference people have been placed at risk. Why do we need to demonstrate as well? I would ask you to consider that, Chairman.

Q15 Chairman: We have taken note of that. It will be recorded in the proceedings. I can tell you that we have asked the Department a number of questions, and, as we indicated earlier, we will be having the Minister before us in two weeks' time. Could I thank you for coming along and giving us your assistance this morning. The final thing I would say to you is that, if, when you go away—and you may be staying to listen to the others give evidence—there is something that comes to your mind and you would like to write to us on it, by all means do so. We have a tight time limit. We cannot drift on for a year on this committee; we have to publish a report within 34 days or something like that, so I can assure you we have to make progress, but by all means write to us if something comes to your mind. Thank you very much.

Mr Evans: Chairman, may I thank you as well for your courtesy.

Memorandum from the Chief Fire Officers' Association

1. The Chief Fire Officers' Association

The role of CFOA is to:

- establish and maintain clear communications links with the membership and facilitate their involvement in policy-making review.
- establish policy positions for the Association on key issues confronting the fire service in a proactive way.
- establish the Association as a body which provides sustainable and independent professional comments and advice on all fire service matters.
- change or influence national policy positions, where appropriate.
- embrace a strategic approach to conducting business.
- develop international links to identify and promote best practice.

2. Commentary

2.1 The proposals embodied in the Regulatory Reform (Fire Safety) Order 2004 are generally welcomed, including as they do, a duty on the responsible person, not only in relation to workplaces but to all premises outside the home and, therefore, requiring consideration of risks to employees, persons resorting to the premises, persons outside the premises who may be affected by fire, the environment, the property itself and the safety of firefighters.

2.2 There are a number of concerns however, which, if addressed, CFOA believe will make the situation clearer, both for those who have to comply with the law and those that enforce it, but most of all will improve the level of safety of our communities. Each issue is discussed. For ease of reference, they are collated in Article order.

3. Article 2—Interpretation

3.1 This article contains the definition of "relevant persons" and appears to exclude firefighters, whilst undertaking their statutory functions, from the protections required to be provided to all other relevant persons. We can only surmise that the persons drafting the Order decided it would be unreasonable to place a duty of care on the responsible person to protect firefighters in their building whilst fighting a fire. We would not be averse to this position and fully understand the intention. However, firefighters can legally be on a premises for a range of other reasons in connection with carrying out duties in support of the functions of a fire authority, eg collecting operational intelligence, giving advice, undertaking a fire safety inspection etc.

3.2 This exclusion also further complicates other Articles. For example, at Article 7(4)(c), which disapplies Articles 8 to 23, plus regulations made under Article 24 to any member of any emergency service if actions under this Article would prevent them carrying out their duties. As Article 8 to 23 relate, in the main, to relevant persons, has this Order effectively made firefighters not members of an emergency service?

3.3 At a more fundamental level, we are concerned that there may be issues arising from the Human Rights Act 1998, which impinge on the principle of excluding firefighters from the general protection afforded to all other relevant persons.

4. Article 9—Risk Assessment

4.1 This article fails to state that a competent person should complete the fire risk assessment. In contrast, Articles 13 and 15 do refer to competent persons. It may be that the legislation drafters believed Article 18 (Safety Assistance) dealt with the issue by requiring the responsible persons to appoint one or more competent persons to assist with prevention and protective measures. This indirect reference is, we believe, not clear and the requirement to use competent persons to draw up the risk assessment must be clearly stated in Article 9. The risk assessment is fundamental to this new approach to fire safety law. If done badly, the results can be catastrophic.

4.2 At Article 9(6), the risk assessment only need be recorded in writing if there are more than five persons employed. This could exclude premises where there is a high risk but less than five persons employed. We therefore submit that the risk assessment should be in writing for all high risk premises including those where a significant number of persons resort to the premises (eg some shops and hotels). "Significant" in this context, should take account of inter alia the nature of the risk, the numbers of people exposed and the nature of the business.

5. Article 13—Firefighting and Fire Detection

5.1 This article requires "where necessary" firefighting and fire detection equipment "in order to safeguard the safety of relevant persons . . ." This follows the principles in a legal case which concluded that firefighting equipment is not required in order to prevent buildings from burning down, even though they may contaminate the environment. Accordingly, sprinklers cannot be required by fire authorities to protect premises and the environment; and a disparity exists between Approved Document B 2000 of the Building Regulations in connection with sprinklers and the Order. We submit that the Order should reflect the requirement for sprinklers in Approved Document B.

6. Article 14

6.1 The term "where necessary" appears in Article 14 in relation to emergency exits and the requirement for them to be kept clear at all times. We cannot envisage a situation where an emergency exit route can be left obstructed when persons are in a building and still comply with the duty of care to protect relevant persons.

6.2 Further, Article 14 at (2)(a-h) does not include fire doors nor a provision to ensure they are self closing or fire resisting. Nor is there a provision to ensure emergency routes are fire resisting. It may be the drafters were relying on Article 17 to ensure these features, when installed under the Building Regulations, would be maintained. However, if missed by Building Regulations requirements, the fire authority would be powerless to subsequently insist on their installation. This is the introduction of a hidden statutory bar and should be removed by including doors, fire resistance and minimum periods of time, for the integrity of fire resistance for escape routes in Article 14.

6.3 For the avoidance of doubt, "place of safety" should be defined to ensure it means a place of ultimate safety.

7. Article 17—Maintenance

7.1 The legislation applies to virtually all premises except domestic premises. In enforcing the legislation, clarification is necessary on the delineation between the front door of flats and individual occupancies in houses in multiple occupation and the common areas (landings, stairwells etc). By way of example, a fire detector placed in a flat as part of the overall fire alarm system for the building as a whole, cannot be required to be maintained, although the detectors etc in the common areas can. Likewise, damage to the fire resistance of the front door to the flat, cannot be required to be repaired to offer the proper level of protection to the main corridor onto which it leads. This matter is further complicated, as under Article 27 an inspector has no powers of entry to the domestic unit to determine if there is a risk to "relevant persons" in the "immediate vicinity".

8. Article 29—Alterations Notice

8.1 This article introduces the principle of alterations notices, which we believe will assist in enforcing the Order. We would, however, ask the legislators to give enforcers guidance on the term "serious risk", as this will determine the level of issue and, therefore, workloads these create.

9. Article 36—Determination of Disputes by the Secretary of State

9.1 This article provides for the Secretary of State to determine a dispute between the enforcing authority and the responsible person if they both agree to refer the matter. In practice, there are examples of approved inspectors ignoring fire authority advice during statutory consultation and then refusing to refer the disputed issues to the Secretary of State under the existing arrangements of the Building Regulations. To avoid replication of these issues within the Order, it is recommended that the Secretary of State be given jurisdiction over disputes in circumstances where one party wishes to refer a case for determination. This would be in line with current court procedures.

10. General Concerns

10.1 *Provision of Plans*

The Order does not give the enforcing authority the power to require plans, as does some existing fire safety legislation. A plan is a useful means of showing the layout and equipment and facilities provided in a building at the time of construction or redevelopment, and is a useful means of assisting with the provision of a risk assessment. Most premises, particularly those more complex and high risk, would already have plans, so we believe it would add little burden on commerce and industry to provide them if required by the fire authority.

10.2 *Implementation*

The introduction of the Order must be accompanied by an effective advertising campaign targeted at key audiences. The introduction of the Fire Precautions (Workplace) Regulations was not conducted well and has led to low levels of awareness and, therefore, compliance.

10.3 *Guidance Documents*

CFOA is concerned that the guidance documents will be suitable and sufficient for the purpose and will be aimed at too wide an audience. CFOA is keen to assist the Office of the Deputy Prime Minister in the development of guidance to enforcing authorities but wish to ensure that relevant persons are properly catered for with guidance documents. We await the first guidance document with interest.

May 2004

Witnesses: **DCFO Andy Marles,** Deputy Chief Fire Officer, South Wales Fire and Rescue Service, and **SDO Nigel Charlston,** Senior Fire Safety Officer, West Yorkshire Fire and Rescue Service, examined.

Q16 Chairman: Good morning, Mr Marles and Mr Charlston. We have your submission. I will not repeat all the comments I made a few moments ago but exactly the same criteria apply to you. Are there any opening comments you would like to make at the start before I ask you a couple of questions?
Mr Marles: If I could, Chairman. I have prepared a very short, two-minute introduction to give members a feel for where the organisation I represent is coming from. Chairman and members of the Committee, the Chief Fire Officers' Association (CFOA) is grateful for the opportunity to address you and offer observations on the proposed Regulatory Reform (Fire Safety) Order. Our sole intent is to make the legislation workable, both for enforcing bodies and for responsible persons, with the ultimate aim of making and keeping the built environment as safe as is reasonably practicable. The proposals are generally welcomed by CFOA as they apply to most of the built environment, offer protection to persons in and around buildings, and assist with property and environmental protection as well as the all-important safety of firefighters. We do however have several concerns which I have submitted to the Committee on behalf of CFOA. These range from some quite fundamental issues that we see in the proposals, to others which if included give clarity and will reduce the reliance on the judiciary in determining appeals and offences. Our submission makes direct comment where we see the issue is clear and also raises questions where the Government could give better guidance and clarity to the benefit of business, the general public and the fire service alike. We see as fundamental amendments to article 2, regarding the definition of "relevant persons" and believe that such a change from the consultation document published in July 2002, which quoted all occupants of premises not just employees, should have attracted further consultation at least with stakeholders such as CFOA and the firefighters' representative bodies. In our submission we raise further comments surrounding the proposals in articles 9, 13, 14, 17, 29 and 36 and some general observations in connection with plans, implementation and guidance documents. CFOA is keen to assist the ODPM to ensure this legislation is effective and able to be enforced with clarity. Since submitting our document, further issues have come to light around article 22, which deals with cooperation, and article 29, alterations notices and the definition of immediate vicinity. On behalf of CFOA I am more than happy to develop all these issues with the Committee, if they so wish. We believe that if these amendments are made they will still meet with the RRO safeguards of proportionality, fair balance and desirability.

Q17 Chairman: Thank you very much for that. We are going to ask you a number of questions. At the end, if there is any particular point which you believe it is important you should make today, by all means do so in the final bit, and, equally, write to us fairly speedily if you go away and think there is something you really ought to have said while you were here. The first two questions are exactly the same as I asked the FBU. I wonder if you could give us your views on the way the process has been conducted so far.
Mr Marles: From CFOA's perspective, we have watched the process with interest. We understood the route that the Regulatory Reform Order would take through Parliament and were gladdened by the fact that the way the process works in Parliament is not constrained by whichever government is in, and all those sorts of things seem to be fairly clear in our mind as to the way that the Regulatory Reform Order is perceived. As Mr Evans of the FBU has told you, there has been some kind of delay in producing the legislation, which has been fortunate for us because it has allowed us to produce some more guidance documents than we might have done had it lived with its original process dates, but I think generally we have been quite happy with the process. We were widely consulted, as were many other organisations, in the beginning with the Government's proposals. We made quite a substantive comment back on those proposals in July 2002 in the consultation document and, except for some of the issues which we now raise with you, many of the issues we raised at the time with ODPM and in conversation with the ODPM and other officials have been taken account of and I think we are fairly happy with the process and the way it has gone forward.

Q18 Chairman: Following on from that, do you think that appropriate action has been taken on issues or not? Obviously you raised points in your response to the consultation. Do you think some of them have or have not? How do you feel it has gone?
Mr Marles: In our original submission, from July 2002, many of those points have been taken account of and are included, and you can see the direct read-across into the legislation as it now stands. Like I said, there are some issues still outstanding. This article 2 definition seems to have come up fairly recently and we were quite surprised when we read that in the document that was placed before yourselves on May 10 when it first came to Parliament. Other than that, we are quite happy that we have been consulted and connections with the officials in the ODPM are quite robust.

Q19 Chairman: It might help you to know that I have been on this Committee and its predecessor since it was formed and it is very unusual for any Government Order actually to go forward in the end in the way that they do, so they do take notice of the things we put forward. Our proceedings do help the Government to look at things.
Mr Marles: That is good.

Q20 Dr Naysmith: One of the points you raised in the original consultation was the number of additional premises which will fall under the scope of the RRO. Have you received any additional information about the number of premises likely to be involved?

Mr Marles: I know my own authority, for example, does have an indication of the total number of premises that are now involved, and it is right there are a lot more.

Q21 Dr Naysmith: Where does that come from? Your own authority has had an indication of that.
Mr Marles: It has actually come about, interestingly, through some work that we undertook, again with the Office of the Deputy Prime Minister, in the Fire Service Emergency Cover model, the FSEC process. I do not know whether the Committee members will have come across that, but that is an ODPM piece of work to produce a computer-generated model of the built environment. Some of the data that you need to build that model actually relies on the number of premises other than domestic premises, so we have a fairly good indication of the number of premises that might be covered by the order. You are right, it is significantly more than were covered by the Workplace Regulations and the Fire Precautions Act.

Q22 Dr Naysmith: Does that come through the regional office, this sort of discussion that enables you to identify which premises are going to be involved?
Mr Marles: We get indications through things like the Ordnance Survey address point, which can actually cover the number of premises that have addresses that are not domestic, and you can do other things like the valuation office data sets, and they actually give you the number of houses that are paying non-domestic rates, for example, so you get a fair indication of the number of premises you might be looking at.

Q23 Dr Naysmith: It sounds as though you are already pretty involved in this process even before the legislation has gone through. How far do you think these new requirements will stretch the resources of fire safety departments?
Mr Marles: Perhaps I could answer that in a roundabout way, but I will get to the answer. With the modernisation of the fire service to which Mr Evans referred, one of the things we have been tasked to do by the Office of the Deputy Prime Minister is to produce an integrated risk management plan. That is about a fire authority understanding the risk in the built environment and in the domestic field so they understand the risk of fire and rescue to persons. If you take the health and safety analogy: there is a hazard called "fire", there is a hazard called "road traffic accident", and there is a risk-reduction process that you can implement to reduce the risk in both those situations. In doing that—again, to use the health and safety analogy—in this instance, the first control measures to put in place are community fire safety on the one hand for domestic premises and legislative fire safety on the other hand to reduce the risk to the built environment. If you take those as your key control measures, you have in the authority a set of resources, and that set of resources are pointed at community fire safety, legislative fire safety and ultimately intervention: so something gets a fire, firefighters appear on fire engines and reduce the risk back to the norm again. The way the authority uses its resources and points them at the three different key methods of reducing risk in the community depends on the risk. If an authority has a high risk in a built environment, it can put more resources towards that risk reduction methodology. If we are losing lots of people in houses in the domestic risk, we could put more resources towards that. In a sense, the authority in the past did not have any flexibility at all. If you have this many buildings and you need fire certificates, that many buildings need fire certificates and you need that many officers to instigate that regime. Under this methodology—and that is why we like this methodology—it allows the authority to be flexible in the way it targets resources against risk. But you are right in what you say: if all these new buildings that are now taken are high risk, an authority will have to place more resource against that to reduce the risk in that particular area.

Q24 Dr Naysmith: It sounds as if you are a bit of an enthusiast.
Mr Marles: I am. Very much so, yes. It is a useful piece of legislation. I chair a committee for CFOA. It has a horrendous name: the Regulatory Reform Order Policy Development Working Group—which is the type of work we do. Mr Charlston is a member of it, and that is why I bring him with me, and they are a very enthusiastic bunch of practitioners in the British fire service. Every time we look at this law we see more and more how it can actually be implemented to make the built environment safer.

Q25 Mr Brown: Again, as I asked Mr Evans, fire-fighting equipment and emergency exits. Do you agree with the FBU that the words "where necessary" should be left out of articles 13 and 14 of the draft order?
Mr Marles: Yes. I could barely put it any better than Mr Evans has put it, to be honest. I will not repeat what he said because we are fully signed up to those arguments that the Fire Brigades Union use. Our concern is, with his, that if you leave the words "where necessary" in, the only people who will determine it ultimately are the courts. More work for the judiciary. There are some good standards about, and my learned friend next to me will tell you some of those standards if you wish and the sorts of levels of equipment that we might require in buildings, but that would not be onerous. To be honest, if you look at the buildings now, most of them have got them in anyway, so it is not a new requirement in that sense.

Q26 Mr Brown: Following on from that, do you think the minimum fire safety requirements for buildings as contained in the Buildings Regulations should appear on the face of the order?
Mr Marles: We have some concerns about the Buildings Regulations which we will pass through to the appropriate committee. They at the moment are talking through the review of Part B of the Buildings

Regulations and we are making those concerns known. Other than that, this legislation works quite well if the Buildings Regulations work well in the first place in making them safe as built—hence it is "safe as built". This is one of the arguments that Mr Evans talked to you about with plans—the plans of the "as built" building remaining with the building and becoming part of the risk assessment. You can then see the connection of built-to-manage building afterwards and maintaining that level of safety discriminatively. The concern always has to be that somebody builds a building without Buildings Regulations approval, or that Buildings Regulations do not equip the building properly in the first instance, and then we are trying to put the building right afterwards. Of course, under the Fire Precautions Act, there is a statutory bar that if a building was built and the Buildings Regulations have got it wrong, we could not do anything about it—and we ended up with a sub-standard building. At least under this order we feel that we can still probably get the building right, even if it is put up wrong in the first instance with some flaws not picked up by Buildings Regulations.

Q27 Mr Lazarowicz: You have asked for guidance on the meaning of the term "serious risk" in Article 29 of the draft order that relates to alterations notices. Could you tell the Committee how you think serious risk should be defined?
Mr Marles: I think I am looking at the sort of risk that is controlled by engineering solutions in building. Big complex buildings these days have engineered solutions—it might be sprinklers, it might be smoke controlled systems—which all have to interact in the right way to allow people to escape—and, in some instances, to allow firefighters even to attempt to put the fire out, as it were. Those are the sorts of buildings that give fire officers the biggest worry in terms of serious risk. I do not know whether Mr Charlston would wish to add anything to that.
Mr Charlston: Mr Marles is correct. We believe there are certain categories of building, particularly in the multi-storey shopping centres, where the line from what can be classified as safe to dangerous conditions is very fine. We believe we should be informed if they intend to carry out material alterations, even if the material alterations may be covered by the Building Regulations. It is that type of building where the facilities within that building are essential. We think that would fall into the category of requiring this alterations notice.
Mr Lazarowicz: I am sure that if the witnesses wanted to send in their suggested definition of the term later that would be useful.
Chairman: Yes.

Q28 Dr Naysmith: What qualities would you regard as necessary in someone required to complete a fire safety risk assessment?
Mr Marles: We have some concern about it because the word "competent" does not appear in the legislation in terms of the person undertaking the risk assessment. There is a definition of competence in the later article. I think we could sign up to that, although I would have to look at the actual wording. There is a definition and it is to do with equipment and those sorts of things. It does actually define a competent person there and we could quite well live with that definition. It is quite a generic definition.

Q29 Dr Naysmith: You are happy with it.
Mr Marles: Yes, if it is just read across.

Q30 Dr Naysmith: Could you tell me the sort of features you think someone like that should actually have, if someone is described as a competent person.
Mr Marles: They have to have an understanding of fire, the way fire behaves, the way that building reacts to fire, so they can understand the risks that are created. It is very similar to the risk assessment that you make with all sorts of other places these days and the health and safety law. Those generic principles carry across. I do have one concern, and this should be alleviated in the guidance document—and once I see the next version of the guidance document I will be looking for it—the fire risk assessment is not just another risk assessment; it is quite an important risk assessment. If you get the risk assessment in a factory wrong over some guard on a lathe or piece of machinery and somebody unfortunately loses a finger or an arm, all those sorts of things, or ultimately gets killed by that machine, that is one person at risk. Horrendous though that is, if you get a fire risk assessment wrong, many, many people can be at risk. That is the concern. That is the one little niggle I have about this piece of legislation, that if we are not careful it just gets subsumed into all the other risk assessments, and I still think it is probably one of the most important risk assessments the responsible person has to make in any field of health and safety legislation. But I think that could be handled in the guidance document and we await the next version with interest.

Q31 Dr Naysmith: It sounds as though such a person needs training.
Mr Marles: For larger premises, I do not expect the responsible person to be an employee of the premises—unless they employ somebody in a company, for example, a big company.

Q32 Dr Naysmith: So you would expect them to be an employee of—
Mr Marles: I could quite expect them having to bring in some kind of specialist help in a very, very big, engineered solution building. Because the engineered solutions are quite complex and interact on each other and unless you understand that interaction . . .

Q33 Dr Naysmith: How do you think such people are going to emerge?
Mr Marles: I guess the guidance document would give the responsible person, the employer or employee, whoever the responsible person is, that kind of guidance, to say, if it is a little corner shop, "Just make sure your means of escape are okay and that you have some extinguishers" or whatever the

document says. They can handle that, it is quite easy to understand—it is not rocket science, as it were—but for the bigger premises, they are going to see this and say, "I don't think I can handle this." It is about understanding something of the building and there are other health and safety duties. They would get a feel for what those issues are and whether they need to bring in expertise. But the big companies employ these sorts of people anyway.

Q34 Dr Naysmith: I am interested in your evidence on the small corner shop. Are you suggesting that people there are going to have to get a consultant in?
Mr Marles: No. Not at all. One thing—and we are again trying to assist the ODPM—of which we are very conscious is that the big multi-national companies across Britain have in the past made comment: "If I build my store in South Wales, I get one level of enforcement; if I build it in London, I get another level." And the local authority partnership scheme developed by CFOA and others has tried to come to terms with that. One of the things CFOA is keen to do—hence the committee I chair—is to come up with documentation and policy that could be run right through the British fire service. Every chief fire officer and fire authority can sign up to that document. Of course they are autonomous. If they do not wish to, they do not have to, but the majority will because the work is done for them and they can sign up to it and we will get this level of enforcement all across. One of the key things we are keen to develop with ODPM is the guidance document. We are actually trying to produce at the moment a short, three- to four-page "This is what RRO means to you" kind of document that we can give to ODPM and ask, "Do you think that hits the spot?" That is the sort of document that I think the little corner shop will need—and that is all. They will not need a 120-page guidance document. The big, multi-level premises with engineered solutions will need the big document.

Q35 Dr Naysmith: That is quite important to this Committee because one of our duties is to try to reduce the burden, not to create new ones.
Mr Marles: Of course. I understand.

Q36 Dr Naysmith: For clarification, you are quite happy with the most recent definition of "competent person".
Mr Marles: Yes.

Q37 Dr Naysmith: In the latest version.
Mr Marles: Yes.
Chairman: There are three different groups of words that we have been concentrating on in the last few minutes: "serious risk"; "competent person"; "risk assessment". They are all quite crucial.
Dr Naysmith: And "where necessary" as well.

Q38 Chairman: Do you think what we are looking at now is just about right?
Mr Marles: Yes. We are quite confident that this piece of legislation will work, will extend this sort of control to a lot of other premises and bring those into some kind of legislative regime. I do like the four strands of the legislation, which I think sometimes we forget when we get the detail. The four strands are: protecting people; protecting the environment; protecting property—which is something that has never much been there before; attempting to do something for firefighters when everything else has failed and they have gone in to try to reduce the risk back to normal.

Q39 Chairman: Mr Charlston, you have sat listening for a while, so, before I ask Mr Marles my final question, is there anything you feel you would like to say on any of the points that have been raised?
Mr Charlston: No. Although we have worked together, Andy has taken the lead. I have no more comments.

Q40 Chairman: You are a good team.
Mr Charlston: Hopefully.
Mr Marles: That is one thing about the fire service: always a good team!

Q41 Chairman: Mr Marles, my last point really is to ask if there is anything you would like to raise that we have not raised in questions before we close the session.
Mr Marles: If I may go back to my original comments, and these are the little bits that come up that I have not included in my response. One is about cooperation. There is a requirement for those premises which are complex by virtue of the number of people in them, and the number of responsible persons possibly, that they must cooperate so that the overall effect of safety in the building is maintained. But there is no offence of failing to cooperate. If we go into a building and find two people who are not even talking to each other and we say, "But you must talk to each other," because that affects the integrity of the building and the means of escape and all the rest of it, and they say, "But we are not talking to each other," we do not have a lot of power to make them talk to each other. We think it would be appropriate for there to be an offence of failing to cooperate. The alterations notice comment is aligned to this definition of "relevant person" that removes firefighters. If we felt that a building was equipped in such a way—and there are some special premises that are equipped in a special way for the ability of firefighters to handle a fire—and we felt that was integral and so important to the safety of the building and the people and the firefighters who have to go into it afterwards to rescue people or whatever that we might want to put an alterations notice on that building for that very reason, to maintain it in the state that it is in at the moment, the concern is that if you remove firefighters from "relevant persons" we possibly—a legal point, and I am not a lawyer—might not be able to place an alterations notice on that building and we might want to. Again, not a major issue. It would be a few very select premises to which that might apply. On definition of "immediate vicinity" somebody said to me the other day, "It would be nice if it were defined, wouldn't it?" I said, "It would, but I guess that the

reasonable fire officer would look at it and say, 'If that person is there in relation to the fire in this building, are they at risk? Yes, they are, therefore they are in the immediate vicinity'." If I am stood here, I am not at risk, I am not in the immediate vicinity. So I guess there is probably a way round it with a bit of common sense and guidance perhaps from us to our fire officers. So "immediate vicinity" was raised but I am not too concerned perhaps on that point.

Q42 Chairman: On one or two occasions you have tended to speak about the "British" fire service.
Mr Marles: Yes, I mean England and Wales.

Q43 Chairman: What about the situation in Scotland?
Mr Marles: Different from this, I believe. I am not an expert at all on Scottish law. I believe it is probably something similar in Scotland, but I would not know the exact detail in Scotland at all. It is England and Wales that the order applies to. I try to be all-inclusive.

Q44 Chairman: They obviously have some devolved powers and they do have separate legislation.
Mr Marles: There is probably something similar happening in Scotland, but I am not sure of the detail.

Q45 Chairman: That is fine. Thank you for coming along. Obviously the evidence we have taken this morning will help this Committee and hopefully this Committee will help the Government. If you think of anything after you have gone away and you want to write to us, do so as soon as possible.
Mr Marles: Thank you, sir.
Mr Charlston: Thank you.

Memorandum from Professor Rosemarie Everton

I would be grateful if I might submit certain brief observations regarding the Regulatory Reform (Fire Safety) Order, (hereinafter the RRO). In so doing, I would explain that I do so purely on a personal basis, and not with any reference to my former membership of the Fire Safety Advisory Board.

My observations are attached in an Annex, and I would thank you in anticipation of any consideration which might be afforded them.

20 May 2004

Annex

I would begin by referring back to my (again personal) response of 18th November 2002 to the Consultation Document on the Reform of Fire Safety Legislation.

Inter alia, I pointed out that, in relation to what might be called "higher risk premises", I had concerns about the intensification and extension of a "self compliance" régime. I said that while I appreciated the European inspiration of such a régime, and the UK obligations as a Member State, there seemed to me weakness in a system which, given the spectrum of competence of responsible persons, threw upon individuals the pivotal task of making a fire risk assessment (and then implementing the necessary measures).

I put forward my view that certain potential consequences of the envisaged control mechanism raised associated difficulty, viz:

— First, upon the adoption of a virtually exclusive self compliant régime, there was the loss of certification. Set against the oft quoted criticisms of this system, it had provided both reassurance to the public and support for small business, and, more basically, had served to reduce over years the incidence of large fires and fire related injury.

— Secondly, with the taking away of certification there was also removed the express, specific, statutory duty to inspect. In support of this removal many cogent points had been made,[1] but the loss still caused me disquiet. It seemed to me that if certification and the express duty to inspect disappeared, there would be a weakening of the impetus for the fulfilment of their duties by the regulated, and the fulfilment of their functions by the regulators.

— Thirdly, I had some doubts regarding the proposed obligation cast on fire authorities to institute, develop and maintain an enforcement programme, an obligation which is central to the envisaged order of governance. What, I asked, if it should prove inadequate?

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[1] These included:
(a) the impossibility of imposing an express, specific statutory duty with respect to the huge range of premises required by European Law to be covered:
(b) the inclusion, albeit implicit, of a duty to inspect in the proposed enforcement programme; and
(c) the benefits of a more flexible, "freer" inspection system in which the prioritisation of inspections was based on *local knowledge.*

I then went on to note that whereas each of the problems presented a concern in itself, what caused me real unease was their *convergence*. If their cumulative impact were considered, then I thought, a serious question was raised as to whether the system would be sufficiently rigorous for higher risk premises—sufficiently rigorous, that is, in terms both of the safety of the public, and of their reassurance as to their safety.

And I asked whether there could be revisited for high risk premises the concept of validation (as clearly expounded in *Fire Safety Legislation for the Future*[2]).

At this stage of my present submission, I would like to pay tribute to the great efforts of the Civil Servants to create a sufficiently robust system, but I fear that the concerns which I raised in my response, for me at least, have not disappeared.[3] Most particularly, I would suggest that, with the loss of certification, there is a pressing need for the institution of demonstrably adequate enforcement machinery, a feature which appears currently to be lacking.[4]

While making the point that my earlier mentioned fears have not abated, I would add that rather they have intensified, their intensification being due to the nature of the canvas on which they have become projected. I would explain:

Fire safety (along with non fire related emergencies) has become the subject of an enormous reform agenda, including the White Paper,[5] the development of integrated risk management planning, the Fire and Rescue Services Bill, and the Draft Fire and Rescue National Framework. Moreover, not only is each one of these initiatives inherently complex, the agenda overall is being driven with unprecedented speed.

It is a situation which, I believe, raises two issues for the RRO:

I take first the narrower one:

Amongst the consequences of the reform agenda is the fact that the enforcement of fire safety law is no longer a discrete activity. With the adoption of the integrated risk management approach[6] it becomes drawn into a single channel along with intervention and community fire safety. Although this intermingling is regarded as the path to greater safety, it surely leaves question marks over fire safety law enforcement. Might it become "squeezed" between the more glamorous and attractive rôles of intervention and community fire safety? Might the numbers of experienced fire safety officers dwindle? Might those remaining find themselves insufficiently esteemed?

I turn now to the wider of my two issues, and, with it, would conclude my submission. Inasmuch as the Order is a constituent part of a reform programme marked by sheer size and pace of delivery, I would ask whether these characteristics might not jeopardise its long term success?[7] My anxiety is that they could do so, and, given the subject matter, this could be far more than simply a pity.

Witness: **Professor Rosemarie Everton,** Professor of Fire Law, Department of Built Environment, University of Central Lancashire, examined.

Q46 Chairman: Good morning. Welcome to our Committee. We are quite an easy Committee, so you have nothing to worry about. If there is anything you would like to say in opening comment, by all means do so.

Professor Everton: Thank you. That is courteous. I would simply thank you all for the opportunity to come before you. It is appreciated.

Q47 Chairman: Thank you. We understand that you are making your representations to us in a personal capacity and not as a member of the Fire Safety Advisory Board, but I wonder if you could nevertheless give us your assessment of the value of how the Legislation Sub-Group of the Board took account of the consultation responses. Did it take appropriate account of them in drawing up the proposal?

Professor Everton: May I say that during the time I was a member of the Board and a member of the Sub-Group I was indeed impressed by the care and attention which was given to the whole process. I thought it was done with utmost attention and in detail.

Q48 Mr Brown: Good morning. I have a fairly simple question but I suspect it is not a simple answer that you will give me. How important do you think it is that fire safety enforcement is not only adequate but seen to be adequate?

Professor Everton: I believe that is most important. I know that I am not alone in that view because it is a view which I have heard expressed while I was a member of the Board and Sub-Group. I think that if there is no public assurance or the public assurance is not at the level which would be considered by some

[2] A Consultation Document. Home Office/The Scottish Office, November 1997.
[3] Although I glean some consolation from the introduction of the notion of "Alterations Notices".
[4] I am aware that the FBU is raising this critical need with you, and I do not dwell upon it.
[5] "Our Fire and Rescue Service", Cm 5808.
[6] —an approach expressed by means of integrated risk management plans ("IRMPs").
[7] As indeed, as I have mentioned elsewhere, they could jeopardise the success of the "whole" venture.

desirable, then, given the nature of this subject, one could argue that the system in place would have a certain defect. I think it is important.

Q49 Chairman: In the context of the order as it stands, how do you think the enforcement mechanism could be made more demonstrably adequate?

Professor Everton: I think within the order as it stands it is not easy. If one looks at Article 26 of the Order, which runs, "Every enforcing authority must enforce the provisions of this Order and any regulations made under it . . . ", etc etc, and then it goes on to say, " . . . must have regard to such guidance as the Secretary of State may give it", you have there a very, very broad kind of provision. If one were just with those words and no more then I think one would be lacking the need, which I believe should be met, for a statutory duty to have in place and develop an enforcement programme, and that in that programme should be a method of determining frequency of inspections. That is missing from that. If one then is caught by those words and they cannot be changed to incorporate such a venture, then I think all you can do is rely upon the guidance. When one considers guidance as it exists, one is looking out of the arena of this Order and into the arena of the new Bill;[1] and there you will find a duty on fire authorities to have regard to guidance which the Secretary of State may issue. You then take yourself to look at the guidance and you find in Circular 29 there is quite an amount of guidance on how a fire authority would set about an inspection programme which was risk-based. The only thing is—when it comes to the crucial bit, as I see it personally, about the frequency of inspections—the guidance says that should be at the discretion of the fire authority, so to speak. The ball is put in their court. That is okay if you have got a fire authority with the resources, the expertise, the commitment and the background experience to be able to set up a programme which does have a sufficient frequency, but that depends on a lot of things. My question is: would those attributes always be present? That makes me wonder. It takes me in a circle back to the point which you raised of the need for public assurance. I apologise for the convoluted excursion.

Q50 Chairman: That is very helpful in going through that (and I used to be shop steward in a factory before I became a Member of Parliament) because to some degree there are comparables with health and safety legislation. If there are not the inspections and the body to actually enforce, to make sure, you can have all the best provisions there but there are loopholes if it is not enforced.

Professor Everton: May I say I entirely agree. There was once the comment made many years ago, I believe, in the health and safety arena that if you do not have sufficiently robust enforcement which is publicly seen as such, then what you have got, however artistic, is an essay in ethics. I quote; not mine.

[1] The Fire and Rescue Services Bill (HC Bill (2003-04) 38)

Q51 Dr Naysmith: I would like to ask about the concept of validation, which is something you have written on and you have written to us about as well. I notice that it was first introduced in government circles in the *Fire Safety Legislation for the Future* consultation document in 1997. The interesting thing is it now seems to have been dropped and not included in this legislation. Is that right?

Professor Everton: Yes, indeed it did make its appearance, did it not, in the *Fire Safety Legislation for the Future* consultation document in November 1997. May I take the various points which you have raised?

Q52 Dr Naysmith: It would certainly be useful if you could explain this, particularly how it applies to high risk premises.

Professor Everton: That is the first point—that my fears are for the high risk. There is another excursion in that, but we will not dwell upon it, of how do you define "high risk"? That is a subject that could be explored on its own but, for the moment, for the purposes of the discussion let us say it might be possible to define "high risk". Then you can ask yourself: what about validation in respect of it? In the 1997 document, as I guess you have noticed, it is very clear that for high risk premises there is a desire for this validation. It is not certification—*that* the document makes very clear. It is a process which incorporates the risk principle and the goal-based principle so, therefore, should be acceptable as such. It brings into the equation what I suspect the French would call the benefit of a second pair of eyes—*validation*; and it has the benefit to my mind of bringing the employer, occupier, owner, whoever he should be, and the fire authority into close contact. Historically I believe it is the forging of the link between the regulator and the regulated and what that link is like that has mattered. I acknowledge that *validation* (validation) has been dropped as an idea. I can understand the reasons why. You could argue that with the risk system you have got the continuing duty, and you could argue that a validational system in a sense either cuts across it or is superfluous to it. Those counterarguments are taken on board by the consultation document and, indeed, dealt with and it is shown how the two ideas could fit together.

Q53 Dr Naysmith: Are you talking about the 1997 document?

Professor Everton: Yes, the 1997 one. Then you come to the point in the present climate of regulatory reform and the possibility, which of course would be argued, that validation imposes a burden. So then one comes to the questions of proportionality, balance of public and private interests, a fair balance etc etc. I would argue that I would acknowledge there is a burden, but that there are countervailing benefits which could be argued to bring you within the requirements of the regulatory reform regime. It is, I know, very personal and I am grateful for the opportunity to put it forward, but I believe perhaps one day there may be a need to re-visit the idea of

validation; and if it could be kept alive as a notion and not simply buried that would seem to me to have potential value.

Q54 Dr Naysmith: I have quite a strong interest in *validation* because in my constituency, in Bristol, there is a very high risk area along the Severn estuary, which has a lot of chemical firms, refineries and docks, which is widely recognised as an area where there is a high risk.
Professor Everton: Indeed, yes.

Q55 Dr Naysmith: The concept of *validation* would apply to that, would it not?
Professor Everton: I think it would.

Q56 Dr Naysmith: How do you think that your ideas differ from what will happen to what is called the "Severn site" in the future under the new regulations?
Professor Everton: My fear is this: with the new regulations, the new Order, you have a continuation and an expansion of the 1997 workplace regs,[2] where the prime responsibility for fire safety is put upon the individual. I know that there is an obligation, with certain exceptions, to appoint a competent person to assist. Albeit that that is so, concerns still remain for me, and they are these: if you have this shift of culture, which is a continuing shift, and will lack the safety net of anything like certification, then what you are doing is putting the prime responsibility for safety upon the individual. It is, therefore, to an extent not the same kind of responsibility that the fire authorities have in the past discharged under the Act. That leads me to contemplate two points: first of all, that many people, according to a survey done by CACFOA,[3] did not even know they had got obligations under the 1997 regs,[4] let alone what they should do about them. So there is going to have to be a great deal of publicity, and I understand that a great deal of money will be put into that. Then, alongside the need for people to be aware and to have the capacity to do what is asked, there is a question of whether a person will indeed be competent; what will be their qualifications of competence; and all that then set alongside the problems perhaps for smaller fire authorities as to how they will resource and sustain an enforcement programme which would be publicly realisable as robust. Those are my fears.

Q57 Dr Naysmith: Finally, it has been really interesting listening to your explanation, but you did not answer my first question. Why do you think it has been dropped? Could I suggest it might be because it would introduce a heavy burden? Is that misquoting or misjudging what you are saying?
Professor Everton: I had better be very careful because it is a most sensitive question. I would suspect that there are many reasons for dropping an idea which would seem to be very good and very relevant, particularly for such places as in your own constituency. I am not trying to duck your question, but the reasons I think lie beyond the province for detection of a mere academic lawyer. I would suspect we could put many adjectives on that.

Q58 Dr Naysmith: Have a go!
Professor Everton: Of course you can advance good and cogent legal reasons and rest on them. The fact that they have come from Europe at this time in the past few years might be, as it were, most convenient. You could advance legal reasons. Alongside surely must be economic reasons. Perhaps we cannot afford any longer to have a Fire Precautions Act. Not only are there many who say it is old-fashioned, but perhaps it simply cannot be afforded. Then, of course, there must be the political reasons—that this is giving power, as it were in the view of some, away from the centre to the locality. The history of fire precautions law is of course a history of tension between the centre and the locality. I do not know which one it is, but I guess it is a mixture.

Q59 Chairman: Would validation be inconsistent with the requirements of the relevant European position?
Professor Everton: If we go back to the consultation document in 1997—and bearing in mind that in that same year the workplace regulations[5] were being brought forth, and if we bear in mind that those workplace regulations are on the European risk-based principle, and in 1997 it was seen that validation could sit alongside(s) for high risk—then I would stand to be corrected by the Government lawyers, but I cannot off the top of my head think of anything which would say the European overriding requirement has changed such that validation could not be accommodated. I do not think so, but the Government lawyers might say I am wrong—but I do not think so.

Q60 Chairman: Are there any points you wish to add before we finish with you?
Professor Everton: Just one, please. Fire policy is moving very fast, and that is one of my fears for the long-term success of the RRO. It is moving towards a policy of education which I think is good, and the attention is being given to fire safety in the home, which is where the deaths are. It is proper for the attention to be given there. It has led me to ask the question: why has the focus turned to the home? Why have the deaths been in the home? Why not so much on the commercial and industrial front? Then I come back to the answer: could it be perhaps because the Fire Precautions Act has done such a good job? Burdensome and criticised, could it not be that it held the fort? So, if we shift the focus from the industrial and the commercial to the domestic, should we not explore the background and ask why, before we throw out the baby with the bathwater?

[2] i.e. The Fire Precautions (Workplace) Regulations 1997 (as amended).
[3] The Chief and Assistant Chief Fire Officers' Association (now CFOA).
[4] See footnote 2 above.
[5] See footnote 2 above.

Q61 Dr Naysmith: Could it not be because most industrial premises are not occupied at night, whereas in homes people are living in them for 24 hours a day?
Professor Everton: That would be another reason.

Q62 Dr Naysmith: Would that possibly have something to do with it?
Professor Everton: I think so. I think again it is a mixture of reasons. All I am doing is highlighting one possibility and phrasing it as a question. I do not know the answer.

Q63 Mr MacDougall: What would be more effective—good regulation or good practice?
Professor Everton: I would suggest the good practice has to be carried by good regulation, because good regulation stems from good law. That has got to be solid and then the practice, hopefully, can follow if there are the resources to do it.

Q64 Chairman: Could I thank you for coming along, as I thanked all the witnesses. If there is anything you want to drop us a note about please write as soon as possible, because to influence our thinking we have to move along and by the time we see the Minister in a fortnight's time our time is rapidly moving on to bringing a report together. Thank you very much for coming along.
Professor Everton: Thank you for listening.

Tuesday 29 June 2004

Members present:

Mr Peter Pike, in the Chair

Mr Russell Brown
Brian Cotter
Mr Dai Havard
Mr John MacDougall
Dr Doug Naysmith
Mr Archie Norman
Brian White

Witness: **Mr Tony Taig,** TTAC Limited, examined.

Q65 Chairman: Can I welcome everybody to this morning's session of the Regulatory Reform Committee? We are here to scrutinise the proposal for the Regulatory Reform of Fire Safety Order 2004 which the Government laid on 10 May. As I said at the last evidence session, this Committee's job is to assess the proposal for the Order against the tests laid down in the Regulatory Reform Act and in our Standing Orders. At the end of the process, we will recommend whether the draft Order should be laid before Parliament unamended, whether it should be amended before it is proceeded with or whether it should not be proceeded with. We have already taken evidence from some of those who have made submissions to us, particularly the Fire Brigades Union and the Chief Fire Officers' Association, and this morning we are to hear the risk assessment expert, Mr Tony Taig, and the Minister at the Office of the Deputy Prime Minister, Phil Hope, who will also be joining us. Mr Taig, you are very welcome and I believe you want to make a few comments before we put questions.
Mr Taig: Yes. I am not by any means an expert in fire and in how local authorities and fire authorities work. I have spent most of my life working in risk management, in safety critical industries, the environment, food and agricultural and other spheres. I am a generalist rather than a specialist in fire. I have been involved working with ODPM, looking at the feasibility of the government's general process of reforms to the fire service. I advised the ODPM Select Committee last year and I have been involved in integrated risk management planning development for the Fire Service. Overall, I am a strong supporter of a risk based approach to managing risks. It is generally better than an approach that does not explicitly look at risks. I am generally a strong supporter of goal-setting regulations. I very strongly support the intent of this Order. I think there is a lot of devil in the detail. If you are going to have goal-setting regulations, you need to be very clear where the goalposts are and we have not seen those yet. They are not laid down in the Order. You need some kind of reference framework so that you can tell overall whether you are getting better or worse than you used to be, and finally, if you are going to be goal setting, if you start laying out some specific requirements, you need to be careful that you have not delimited what the enforcers and regulators can do by not mentioning some other important things and I think there are some gaps.

Q66 Chairman: At the end of the questions, if there is anything you feel you want to add that we have not covered, by all means say so. If there is anything when you go away from here that you feel you wish you had said, if you wish to submit it in writing, please do so as speedily as possible because we are against a fairly tight time schedule and we have to pull the report together on this proposal in three weeks' time. Are there any protections in the 1971 Act which the proposed Order does not cover?
Mr Taig: In principle, no. In practice, possibly yes. I do not know enough about how the law works. It seems to me that there are some areas where this Order starts itemising some specific requirements and is incomplete in the necessary sets it itemises. I do not know whether the intent of the Order takes primacy over the detail it starts to itemise or whether, by itemising some things, it has thereby excluded some other things that the regulators and enforcers might look at.

Q67 Chairman: Fire certificates give some assurance to the public that the premises where they are working or staying have taken adequate precautions against fire. The risk assessment regime will not require fire authorities to issue fire certificates. In effect, persons carrying out risk assessments will be certifying themselves. How do you see that?
Mr Taig: That works very well in lots of other walks of life where I have been involved. What we need is some satisfaction that the inspection and enforcement regime is giving you equivalent or better safeguards than the old certification regime. I notice in the attachment to the Order from the ODPM, it says that it is at the Minister's discretion to demand some form of inspection and enforcement proposals from fire authorities and to be satisfied with them, but it is not written into the Order that they have to be provided. It is implicit. You could not have an integrated risk management plan that did not involve a fire authority spending a substantial chunk of its resources inspecting and enforcing against these regulations.

Q68 Dr Naysmith: Are there any clear benefits under the present system that will be less as we move to the new proposals?
Mr Taig: I am not aware of any specifically. My key concern is that there is definitely a risk of loss of confidence if we do not have some visible, transparent means of seeing how enforcement and

inspection are working. There is nothing to stop there being such a process here, but there is nothing to require it either.

Q69 Dr Naysmith: Do you think there should be?
Mr Taig: It should not be necessary because it should be implicit in the other arrangements the Government is putting in hand for reform of the fire service, but I am very conscious, if you suddenly free people from constraints and go into a self-certifying, goal-setting regime, if you are not careful about the things that you require, particularly about having a basis for monitoring how well you are doing, you can very easily drift off into a fairly anarchic world where people are doing different things and you have really no oversight of how well you are moving forward in different areas.

Q70 Dr Naysmith: Do you think that is a real risk?
Mr Taig: Yes.

Q71 Brian White: Some of the things some fire authorities have done have been quite innovative. Is not the risk of your prescriptive approach going to prevent some of that innovation?
Mr Taig: I am not arguing for a prescriptive approach at all. Yes, there is clearly a risk in this move. That does not mean it is a bad thing. I think this move is a good thing but the risks need to be clearly identified and managed. I am 100% behind the move to a less prescriptive approach and there is a great opportunity to free up resources that are doing very low benefit things by fire authorities and to spend them doing much more beneficial things.

Q72 Mr Brown: I am sure you would agree that the fire certificate regime is well recognised. Do you think there is a danger that the proposed regime to be imposed on businesses could become just another risk assessment and it may be given a reduced priority?
Mr Taig: That is very unlikely. If you look at what a fire authority does with its time and resources, it does this kind of fire certification activity—building inspections, satisfying itself that premises are okay—and it does fire prevention, community safety activity, and it does response and rescue activity. The whole thrust of the Government's reform is to push it to the left of that area, to be spending more time on prevention and making sure that the premises are okay so that we have to put fewer resources proportionally into the response and rescue. If you take the thrust of everything the Government is asking fire authorities to do, it says to me you should be emphasising this area of your work, not de-emphasising it. If you look by analogy at what has been happening in the integrated risk management process, the fire authority is not going to throw out the baby with the bathwater and throw fire certification out of the window. They are going to take as their starting point for their inspection and enforcement regime the stuff they have always done. I would imagine, because they will be very reluctant to take risks, that they will be very slow to move away from that and they will only move away from that when they can clearly see some better practice established.

Q73 Brian Cotter: From the point of view of a risk assessment specialist, are there any weak points in the proposed risk assessment regime?
Mr Taig: Yes. The obvious one is that at the moment we do not know where the goalposts are. You cannot leave it to a million premises and their duty holders and however many thousands of fire inspectors that there are to make their own judgments as to what is a satisfactory level of risk or what is a suitable set of precautions for facing a different risk. You must have guidance on that. This Order is very heavily following the Health and Safety at Work Act in the way it works. It has two things that we do not yet see here. The first is a series of codes of practice and guidance that spell out to people: these are the benchmarks we expect people in different circumstances to be able to meet. They are perfectly free to come up with something different but it is terribly important that the regulator provides a recipe for people so that they can know when they are compliant and when they are not and the enforcer can know when they are compliant and when they are not. We have not seen all that yet. That is going to be very important to pin the Minister down on as to when we are going to see all that. If you are going to manage risks properly, you need to give your enforcer and your regulator all the powers that they need across all the types of precaution that are sensible to manage risk. You need to be able to influence preventing fires from happening in the first place, limiting them spreading and putting people at risk, helping people get out to a place of safety and helping them be rescued reasonably safely by the firefighters or other people. This Order itemises various bits across that spectrum of sensible things but it does not, at the highest level, give either the enforcer or the regulator powers to require whatever they think is appropriate across that spectrum. For example, as the Chief Fire Officers' Association has pointed out, it does not itemise anything about arrangements for preventing the spread of fire. Although that is built into the building regulations, if it did slip the net, under these regulations it might be possible to interpret this Order as saying that firefighters do not have the power to go back. It is not very explicit about prevention. Risk is defined here as "the risk of something", which is a bit tautologous. It does not really define risk and in so far as it does it defines safety as "safety in the event of fire". That means if the fire has already happened. It does not define safety to encompass preventing people ever being exposed to fire in the first place. You could argue under this that you inspect premises, find the arrangements for preventing the spread of fire are appalling, that there is flammable waste and stuff all over the place, dreadful fire hazards, and you might yet argue that the authority did not have the power to go and tell them to sort if out. I am not quite sure what takes primacy here and whether the intent of the Order would take primacy over the wording, but

to me it is dangerous if you say, "We are going goal setting" and then you start spelling out some particular requirements but you leave out some other important ones.

Q74 Chairman: You are aware that we are considering a draft. This Committee has to report and will make some suggestions as to whether the government should amend it, strengthen it or delete something. If you were in such a position, would you be saying to the government, "You need to spell out a bit more in some cases" and, if so, what?
Mr Taig: I would be saying, "Keep it much simpler." Get a high level of stuff up front and make sure that takes primacy over all the detail that follows. What this is saying is duty holders must do a suitable and sufficient risk assessment and, on the basis of that, they must devise and implement and maintain some appropriate arrangements to prevent fires arising, prevent them spreading and putting people at risk, facilitate people getting out and facilitate rescue. If that came first and took primacy over all the rest, I am very happy for them to itemise specific requirements in specific areas. I am just a bit concerned that, without saying that first, by itemising some things you then delimit the scope of the Order.

Q75 Brian White: You referred to the analogy of the health and safety legislation. That took about 20-odd years before it became effective. Are we going to have to wait another 20 years for this to become effective?
Mr Taig: It took 20 years before the regime had fully changed to reflect the Health and Safety at Work Act. The same might well happen here but I do not think it took 20 years to have an effective regime in place instead because, under all the legislation that the Health and Safety at Work Act replaced, lots of enforcing bodies used to carry out enforcement activity. After the Health and Safety at Work Act, the default was that they all carried on. Gradually over time, they evolved what they did to be more focused on risk and less prescriptive. The short term effect was that you did not notice very much change and I would be very surprised if it was any different here.

Q76 Chairman: Where can you say you did not see very much change?
Mr Taig: I was not there in 1974. I started work in 1977 but the general view would be that in some specific industries where the Health and Safety at Work Act gave the regulator power to establish a specific licensing regime that had not been there before, like the offshore industry, the nuclear industry and major hazard chemical industries, there, you saw rapid change. In most other ordinary workplaces, the sort of places that are inspected and enforced by local authorities, change was not rapid.

Q77 Chairman: I worked in a very large factory for a very large responsible group, Mullards/Philips. We saw a massive and very rapid change. For years, things had been totally unprotected prior to that legislation with glass overhead suddenly having wire cages and it was absolutely incredible. Everybody had a responsibility for safety, including the workforce. It had a dramatic impact on the number of accidents.
Mr Taig: I have spent all my life arguing that that kind of change produces those kinds of effects.
Chairman: There was an extremely dramatic reduction in accidents in factories, very speedily.

Q78 Mr MacDougall: There is an issue between relaxation and continued commitment. Is there not a danger that fire authorities may decide to divert their attention and resources away from the continued commitment that exists at present under a real Act situation? Therefore, if you want to quote the risk assessment, the risk becomes greater and that becomes a much more threatening environment.
Mr Taig: That would be bad management by the fire authority. The thrust of what government is asking fire authorities to do is to focus more energy on things that will prevent fire and reduce risk at source. The matter of this Order is exactly that kind of area. The message I think the Government is sending is that we are giving you more flexibility here but we are not at all saying we do not want you to take this seriously. If I were the Government reviewing any integrated risk management plan that was not very strongly focused on the inspection and enforcement regime of premises, I would be very upset. I would be taking measures to make damned sure they changed it.

Q79 Mr MacDougall: Do you think the temptation is greater, given this relaxation?
Mr Taig: Temptation, when you look at a fire authority, is the other way. In the past, fire authorities have not been a place where people locally have to make very difficult decisions. Frameworks are decided centrally. All they had to do was to check with the Chief Fire Officer that he was following the centrally laid out rules and guidelines. Then they could all sit back and relax and feel that their bottoms were covered, if you like. In the new world, it is fire authorities who will be accountable for decisions to vary established practice. Far from fire authorities being bursting to throw the old recipes out of the window, fire authorities are much more likely to be thinking, "Goodness me, I used to have a lovely big recipe down the seat of my pants and now I do not any more. The last thing I am going to do is accept a proposal from my Chief Fire Officer to chuck away two thirds of what we used to do and shift the resources somewhere else, unless I have really strong evidence that it is going to work".

Q80 Dr Naysmith: Quite a lot of times in this legislation it contains phrases like "where necessary" or "significant" and that kind of thing. In your experience, does that not lead to people having arguments about definitions and eventually ending up in court where people try to define what the minister meant when "where necessary" was introduced?

Mr Taig: My concerns are a lot less but what you are comparing with is going to be in this guidance that we have not seen yet and in codes of practice. "Where necessary" should clearly include where required by other mandatory legislation. That is not arguable. What has happened in the case of the Health and Safety at Work Act is that lots of businesses complain that the yardstick of compliance is hard to judge and an awful lot is down to the judgment of the local inspector. There is a lot of reliance there on having well laid out codes of practice and guidance that explain to people what is good practice for different circumstances. Then you have something to compare against. You are never going to have a yardstick to come and measure the riskiness of an organisation and some kind of criterion on risk. The real criterion is going to be: are they operating good practice that is appropriate for the hazards and risks associated with their activity? That is why I think this guidance is so critical. Without it, all these concerns will proliferate about how this will work. It is very important that that guidance is in place and is good.

Q81 Dr Naysmith: How do we ensure that that guidance is in place and is good, because presumably we are going to pass this before we see the guidance?
Mr Taig: I would not allow the Order to come into effect until that guidance was in place, if I had the opportunity. It would seem a very odd way round to do it, to take away a framework we have relied on for assurance and replace it with something we are going to evolve. In the meantime, we will just allow people to do their own thing. That does not seem a very satisfactory state of affairs.

Q82 Chairman: You are saying that perhaps we should say that the Order should not come into effect until the guidance is published?
Mr Taig: What is the use of the Order if you do not have the guidance? How can any fire authority, employer or premise holder do anything other than what they have always done?

Q83 Chairman: You make a valid point. The reason I am putting it to you now is that the norm with this Committee is that we reach our decision; the Government looks at it and indicates what they feel about it and they normally fairly speedily publish the Order. We would expect it to have been published as soon as we have published our report. We will not come back until after the recess and then they have that period to respond to what we have said. We would expect them to come back fairly soon after the summer recess.
Mr Taig: There is a default guidance before the guidance that the government plans to produce is available. The default guidance is that fire authorities carry on inspecting as before and use these new powers as equivalent to your previous certification, in as near a way as you can. Premises holders, get on with your risk assessments but do not relax any of the things you were previously required to do to get your fire certificate. That is the default that will run until some better guidance is in place.

Q84 Chairman: Is there anything else you feel you would like to say?
Mr Taig: There is one other area where it seems to me the Order is interpretable in different ways. I have mentioned it sets requirements in certain areas but leaves out others or is patchy in the way it does that. It is also patchy in the way it relates to what I would call the life cycle of the duty holder putting proportions in place. It talks about doing a risk assessment and maintaining protections and having some competent advice to maintain protections, but it does not talk about having competent advice when you devise what your protections are going to be or when you put them in place. A very simple thing would be to make it clear that you should competently devise and put in place and then maintain whatever your protective arrangements are. It is high level, simple things coming up front before you get into the detail.
Chairman: If there is anything you wish you had said, do write to us. Thank you for coming this morning.

Supplementary memorandum from Mr Tony Taig

Further to this morning's session, I am writing to clarify what I feel are the significant general opportunities to strengthen the Order (of which most of the FBU and CFOA comments provide specific examples). I would like to see three key things done/happen:

1. Make sure the order provides a sufficiently broad-based framework for regulation and enforcement by providing a suitable overarching statement of requirements that overrides detailed requirements stated (and not stated) in the Order,

2. Develop national performance measures and indicators that will provide the real test of whether the changes are making things better or worse, and

3. Make sure appropriate guidance (on risks, precautions and enforcement) is available to ensure the order will achieve the intended outcomes.

The attached note suggests an up-front, high level Article that could defuse a lot of the issues and concerns raised about the Order (with notes on how, and on the implications for where "guidance" will be critical to the Order's outcome). This addresses my 1st and 3rd points.

On the second point, what we need is some framework (analogous to RIDDOR reporting requirements under H&SAWA) for ensuring key outputs/outcomes are consistently recorded and reported centrally, so we can see whether we are getting better or worse in managing fire risk (and the 4 aspects i-iv of it itemised overleaf). Government and the Audit Commission have put this into the "too difficult; will take years" category, but I really don't think this is the case. Better use could be made of information Fire Brigades already routinely collect.

Annex

REQUIREMENTS OF DUTY HOLDERS UNDER THE FIRE SAFETY RRO

(somewhere up front after the definitions and before Articles 10-20 insert an Article something along these lines):

The overarching requirements of the Order of persons responsible for premises within its scope are:

1. to undertake a suitable and sufficient risk[(a)] assessment[(b)] of their premises and undertaking and then, based on that assessment,

2. Devise, put in place and maintain[(c)] appropriate arrangements to

   i. prevent fires from occurring[(d)],

   ii. prevent fires spreading and putting people at risk[(e)],

   iii. facilitate escape of people who might be affected to a place of safety[(f)], and

   iv. facilitate the (safe) rescue of people unable to escape on their own[(g)].

These requirements take precedence over all other requirements amplified in subsequent articles of this Order.

NOTES

(a) "risk" needs defining better—at present the definition includes "risk" within it. Also, by defining risk in terms of "safety in the event of fire" the Order could be interpreted as ignoring "safety in respect of protection from the occurrence of fire", and bypassing the whole issue of preventing fires occurring. Better definitions would be

"SAFETY"	means the safety of persons in respect of harm caused by fire
"RISK"	means the likelihood of harm to persons arising from fire, unless otherwise defined (*I note that the very first use of "risk" in Article 4 means something quite different from the definition in Article 3*)

(b) What constitutes a "suitable and sufficient" risk assessment, and what constitutes a "serious risk" require clear guidance, without which the order is meaningless.

(c) The CFOA made the point that the requirement to employ a competent person is raised only in respect of maintenance of fire precautions. The more general point is that the Order risks confusion when it talks about "implementing" and "maintaining" precautions. I am sure that what it is trying to say is that duty holders must DEVISE, and IMPLEMENT (ie put in place), and MAINTAIN appropriate arrangements. If so, it should say so.

(d) See above point on definitions. The Order is very non-specific on precautions aimed at preventing fires from occurring, and if the definitions were interpreted literally could be interpreted as including no requirements at all in respect of preventing fires occurring (which runs entirely contrary to the thrust of government reforms).

(e) My points i-iv generalise from various points made by CFOA and FBU, that by specifying in detail some particular requirements, for PARTS of the spectrum of good practice measures for control of fire risk, the Order risks being interpreted as meaning that powers do not apply to other necessary types of measures (eg the Order sets requirements for "fire fighting" but not for the real intended purpose of "limiting spread of fire putting people at risk".

(f) This incidentally would pick up the good FBU point about what "escape" means.

(g) This incidentally would give protection of fire fighters and various of the currently "miscellaneous" articles a proper place in the overall framework, and nicely link these together with the "provision of assistance" type articles.

IMPLICATIONS FOR GUIDANCE

There is considerable risk of confusion, loss of consistency of application and enforcement, and loss of public confidence in inspection and enforcement, without clear guidance on:

1. What we mean by "risk", what is a suitable and sufficient risk assessment (this would pick up the point about provision of building plans), and what constitutes a "serious risk" warranting intervention via an Alteration Notice or Enforcement Notice [*Note:* in aggregate across the country, significant risk might be associated with lots of "medium risk" premises where precautions were far below what would be appropriate—the criterion for intervention might be better defined in terms of EITHER "serious risk" OR "serious departure from established practice in risk control".

2. What constitute appropriate precautions for a given level of risk/hazard in an undertaking. This should be covered by the Government's proposed guidance booklets. [*Note:* there is a significant gap in the proposed list of subjects for guidance, relating to Multiple Occupancy Properties—as CFOA identifies, these may be a particularly difficult case, where control of risk for the whole of the commercial premises relies on devising, implementing and maintaining appropriate measures within individual domestic properties not within the scope of the Order. This is clearly a case where particular guidance is needed.]

3. What constitutes an appropriate inspection and enforcement regime. [*Note:* given that the new tool in the enforcer's armoury that will really help improve efficiency and effectiveness is the premises' risk assessment, it will be important for Fire Authorities to have means of satisfying themselves that risk assessments are suitable and sufficient, and fairly reflect things on the ground—AS WELL AS satisfying themselves via inspections that appropriate precautions are in place]

As the Minister said this morning, guidance such as that on the third point above can perfectly properly be given via the national framework currently under development. But the critical point, which Mr Norman raised in the context of the government's proposed booklets, is that without seeing the guidance on ALL the above points, the Committee is not really in a position to evaluate the likely impacts of and outcomes from the Order.

29 June 2004

Witnesses: **Phil Hope,** a Member of the House, Parliamentary Under-Secretary of State, and **Mr Andy Jack,** Head of Fire Safety Legislation Branch, Office of the Deputy Prime Minister, examined.

Q85 Chairman: Can I welcome the Minister this morning? We are interested in the proposal we have before us. Could you introduce your colleague? Also, I believe you want to make a few brief comments before we turn to questions.

Phil Hope: This is Andy Jack, Head of Fire Safety Legislation Branch at ODPM. Thank you very much for inviting me to give evidence. I hope I can be of help in your consideration of this Regulatory Reform Order. It is a major piece of legislation. I think it is possibly the largest since the Act itself in 2001. You will know the decision to proceed with the Order was taken several years ago and it was cited as one of the uses of the RRO procedure during the passage of the Act. It is an important part of the programme that we are putting forward to switch the emphasis towards preventing fires from happening in the first place and putting risk assessment at the heart of the approach to the work of the service, something that the Bain Review said to us, and something that we picked up through the White Paper, which has been recommended through the use of integrated risk management plans and in particular recommending the Bill and a new duty of community fire safety as a role of the Fire Service. In terms of those plans, the fire and rescue authorities have now all produced their IRMPs[1] and a consolidation of statutory fire safety legislation on a risk assessment basis under this Order, together with those new duties in the Bill to promote fire safety, provides a legislative underpinning for the development of this whole process. I want to emphasise, in terms of the Order and the Bill, the two measures are of course complementary to one another. We decided not to combine them together. The Government's approach is to use a Regulatory Reform Act procedure, wherever it is appropriate, whether or not primary legislation is in prospect. We are doing that both to reduce the burden of unnecessary bureaucracy, to do things as quickly as possible but consistently with maintaining the necessary protections and of course to reduce pressure on Parliamentary business. We did consider using the Bill to take forward some of the reform of fire safety legislation but we decided not to. It prevented the Bill becoming over long and made use of the substantial work that had already gone into the RRO procedure. That is why we proceeded in this way and I think it has been quite a successful approach so far.

Q86 Chairman: This is a very large proposal. It has 52 articles, five Schedules and it is amending or repealing 79 separate pieces of legislation. Do you think that the proposal is controversial?

Phil Hope: I do not think it is controversial. This is very much pulling together into one place all of those various pieces of legislation, Orders and so on from the past, in a way that will make a great deal more sense to the world out there. During the consultation process, far from being controversial, this has been welcomed as being very much a step in the right direction in terms of making life a lot easier, reducing burdens on many, but also putting in place

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this new approach of risk based assessment. That combination of measures, although it is very large, does bring together a substantial amount of otherwise disparate matters.

Q87 Chairman: The consultation exercise did not see it as controversial?
Phil Hope: No. There were issues but we worked through the consultation exercise. We had 276 replies to the 10,000 or so questionnaires and documents that were sent out. People can see those on the website. We were very encouraged by the level of response, which was relatively high for this kind of exercise, and the way that the fire community, the business community and others have responded and become engaged in the process. I think we have come up with a set of proposals here that has a broad consensus of support within the fire community.

Q88 Chairman: Whilst the Bill is not the responsibility of this Committee, we recognise the Bill is related. You feel that it would have made too big a Bill if some of these aspects that we are considering in this proposal were to have been incorporated in some way?
Phil Hope: Absolutely. The Bill would have become unduly long and cumbersome. Admittedly, a lot of this could have been done in the regulations but there would have been a chance that we would not have been able to do the kind of thoroughgoing exercise that we have managed to do here through the RRO, also building on the work of the Regulatory Reform Order procedure seemed to us to have been a good divide between the two processes that are working hand in glove, very complementary to one another. We have achieved the almost successful passage of the Bill, given the amendments, and we have here a very comprehensive, well supported Regulatory Reform Order that will do a huge amount to improve fire safety in the wider community.

Q89 Chairman: We know that some departments feel that the use of the regulatory reform procedure constrains them and puts more limits on. There tends to sometimes be more scrutiny and more consultation as a result of this procedure rather than if it was done via the Bill. From what you say I take it that you do not feel as constrained in your Department?
Phil Hope: It would probably be wrong of me to comment on the views of other Government departments. We have found this process, which has taken some time because it has engaged people actively in the process, the business community, the fire rescue authorities, the Fire Brigades Union and others, has created more ownership. We have thoroughly explored all the issues. We have now arrived at an outcome that the wider fire community are happy to proceed with. Because it complements the Bill, they can see that it is a drive towards modernising the fire rescue service and achieving changes that reduce burdens but increase fire safety, which is a win-win outcome for all concerned.

Q90 Chairman: You would not accept the view put forward by critics that you could have done more in the fire safety field if you had done something in a Bill rather than through this procedure?
Phil Hope: Probably the reverse. We have managed to combine through the Bill and the Regulatory Reform Order a lot more than we would have achieved by simply doing it through the Bill alone. That is our feeling in the Department. It has been very successful.
Mr Jack: I agree. A particular advantage of the Reform Order process for us has been the ability to engage with the Committee where questions have arisen which would not arise during the course of a Bill. That has been exceedingly helpful.

Q91 Mr Brown: CFOA and the FBU have both stressed the importance of building plans in preparing risk assessments and thereby providing assistance to fire fighters should the need arise. The proposed Order contains no requirement for plans to be attached to risk assessments and no power for enforcing authorities to provide plans. Why does not the proposed Order require relevant persons to provide building plans alongside their risk assessments?
Phil Hope: The purpose of the risk assessments is to target activity on those areas of buildings and properties most at risk. When the Fire Service does its inspections and looks at those buildings, the responsible person for those buildings has the responsibility to ensure that the building does conform to the fire safety regulations. Upon inspection, the authority does have the ability to check that that is in line with what is safe and to recommend changes if there are breaches. Ultimately, they do have the sanction of taking the responsible person to court if that does not work but we are pretty confident that that interaction between the fire and rescue authority and the owner of the building or the person responsible will create the improvements to ensure that the building is as safe as it needs to be.
Mr Jack: The Order as drafted provides for the provision of reasonable information to the fire authority. If plans exist, CFOA and the FBU would expect to be able to see them and perhaps to mark the location of fire fighting equipment. The Order as drafted would allow them to do that. It allows for obtaining the documents and so forth and for reasonable information to be provided by the responsible person or any other person who appears to have that information within the premises concerned. What the Order would not allow for would be for a fire authority to demand perhaps an architect to be appointed to specially draw up plans just for this purpose. That would seem overly burdensome.

Q92 Mr Brown: It makes sense that that information should be made available. Do you feel, if there was a statutory requirement to provide plans alongside risk assessments, there would be a substantial burden on the relevant persons?

Phil Hope: Yes. We feel, through the consultation, we have made the right judgments.

Q93 Dr Naysmith: As you almost certainly will know, article 13 of the Order requires fire fighting equipment to be provided on premises to ensure the safety of relevant persons from fire "where necessary". We have had evidence in this Committee from the FBU and they have suggested that the question should really be how much and what type rather than should they have it at all, when talking about equipment. Are there any circumstances where it would not be necessary to provide fire fighting equipment on premises that will be covered by this Order, in your judgment?
Phil Hope: This is again based on the risk assessment of the individual person responsible and the view of the fire and rescue authority. It is important that there is fire and rescue equipment there. It is not incumbent upon the person responsible to train up the workforce working in that building to use that fire and rescue equipment. They are not expected to do that. It is there to be used but there is no obligation in the Order to expect the lay person in a building to become a firefighter. It is the job of firefighters to do that.

Q94 Dr Naysmith: The particular point is that it refers to equipment and suggests that there should be equipment on the premises, where necessary. In article 14 of the Order, something very similar comes out where it talks about routes to emergency exits from premises and the exits themselves should be kept free at all times "where necessary to safeguard the safety of relevant persons." Again, can you think of any circumstances where it might not be necessary to keep an emergency exit clear?
Phil Hope: Yes. There are two elements to the assertions being made about the use of the term "where necessary". The first is that it might contradict some requirements in the European Directive. It might remove necessary protection, whether it is the equipment or the exit. We have built in those caveats about "necessary" but that does not mean that protection is removed. The regime that requires these fire precautions to be present when they are necessary would not require the precautions to be present when they are not necessary, which is the reverse of the point. If they are not necessary to protect people, they can hardly be said to be providing necessary protection. It is down to the risk assessment by the person responsible to look at what is needed in their premises, to provide appropriate equipment or appropriate exit plans. Those persons responsible, with the fire and rescue authority, can then look at what that might be and make their judgment as to what is or is not necessary. The phrase "where necessary" is not designed to reduce protection in any way. It is to provide that necessary judgment about risk. The person responsible and the fire and rescue authority need to draw a sensible conclusion about what works and what is appropriate.

Q95 Dr Naysmith: Perhaps Mr Jack could answer the question. Can you think of any circumstances when it would be relevant that an emergency exit was not kept clear?
Mr Jack: There is a point I would like to make about the use of the words "where necessary" which will lead on to that. There is a difference in relation to fire fighting equipment. Under current legislation, fire fighting equipment is provided for the purposes of ensuring that the means of escape can be used. That is the sole reason for having it. There is case law on that point. The difference with the Regulatory Reform Order is that it requires the equipment and the other precautions to be provided for the safety of persons, which is beyond simply protecting the means of escape. It would encompass perhaps an elderly resident in a fire in a residential home, dropping a cigarette on a flammable nightgown. There should be equipment available for the staff to do something. Moving on to the means of escape point, it is very much a matter of the risk assessment but if one were to take a building, even such as this fine building, late at night with only security guards here, some exits may be locked or barred for security purposes. In that respect, there is the consideration is it necessary to leave them unlocked or are there other considerations such as "could people break in". That would be applicable in shops, offices, nightclubs and so forth. There would be circumstances where means of escape might be blocked by barring them on the basis of risk because it ceases to be a necessary means of escape due to the much reduced number of people present. Could there be no means of fighting a fire? The strange example usually used is that about the only place you could not have fire fighting equipment potentially is where someone is making concrete gnomes using concrete moulds out of ready mixed concrete in the open air.

Q96 Dr Naysmith: The reason we are pursuing these questions is the suggestion that, because of this ambiguity which the use of such phrases introduces, you might end up with some people being given a green light to cut corners because they think there is an argument. Interestingly, you mentioned the EU legislation. As I understand it, it says "as necessary", not "where necessary" which does introduce a very subtle difference.
Mr Jack: I know the Fire Brigades Union almost laid a challenge to the Committee to find the words "where necessary" in the relevant Directive and I would happily say that you will not. The preliminary Article to the Directive uses the words—I forget the exact phraseology—"these provisions should be provided where they are required according to the circumstances of the case" and so on. It is really a matter of plain English, we hope, and we use the term "where necessary" for that purpose.

Q97 Dr Naysmith: You do not think this will end up in the courts, trying to work out what was really meant when the Minister introduced the legislation?

Phil Hope: No. This is a shift in risk assessment and on that basis sensible conclusions are arrived at, taking into account the circumstances that Mr Jack has mentioned, which will provide adequate protection.

Q98 Mr Havard: This runs right through the whole thing. The fact that you are making the point that this is a shift from simply equipment for escape—this whole question of safety. There is the relationship with the Health and Safety at Work Act and all of the aspects of that, particularly the management of health and safety and the risk assessment element. That has become very important in terms of that Act and is a development from where it started. There is a sort of incremental progression going on here which is very welcome and long overdue. There is a relationship about enforcement. I am an old trade union official and I have had this discussion so many times in so many different workplaces with so many different employers. Their lack of understanding of how they have to relate to the general public rather than their employees as well, the whole picture of where they sit in relation to their obligations for policy statements and how all of these different aspects must relate to their description of what they do about their obligations to people for their safety and welfare in the broader context. Enforcement can come through the Health and Safety Executive to some regard in most things and then we have seen rail crashes and all sorts of other things. We start straying into corporate manslaughter and all the rest of it. This only deals with particular aspects but it has to have a proper relationship with all these other things and there is a lack of consistency in the description of the terms used of "where necessary", "where practicable", "where reasonable", "as necessary" and all of these different things. I am wondering whether you look at the broad canvas on which you have looked at all these different aspects of different parts of primary legislation, regulations and so forth and why we cannot see some sort of consistency here in this terminology, because when it comes to the practical debate between two individuals trying to make sense of all of this they start interchanging terms and there is no common understanding of what is "where necessary". Some sort of explanation of what is meant is fundamental to this whole discussion because the legislative framework is highly progressive but when it comes to practical application it is very difficult.
Phil Hope: The reason for the RRO is because there is so much fire safety legislation, Orders and regulations in a variety of different places. By bringing them all together in one place, that makes clear who is responsible and to what extent. The enforcement and the guidelines do make it clear to everybody exactly what their responsibilities are. You are making a wider point about health and safety legislation and so on which I am not qualified to answer, but in terms of the remit of this Regulatory Reform Order it is exactly that kind of confusion of different things in different parts that different businesses have not cottoned onto. We think this is why the Order itself provides us with this real step change forward.

Q99 Mr Havard: The discussion about "where necessary" is part of the discussion about what is reasonably practicable.
Phil Hope: I understand that point of detail. We have taken from existing legislation, the 1974 Act, these kinds of words to ensure that there is consistency with the previous legislation, rolling it forward into this Order. We are not creating any new inconsistencies.

Q100 Dr Naysmith: Article 2 defines a "relevant person" for the purposes of the Order. Relevant persons are those persons whose safety from fire has to be taken into account when drawing up a risk assessment and instituting fire precautions. It excludes firefighters from the protection given to others. I wonder if you can give an explanation for that?
Phil Hope: The Order does not provide in general terms for the safety of firefighters. That is absolutely correct. That approach was agreed with the Chief Fire Officers and the FBU, although I can understand they would both like to see the law do so. It was agreed that this Order was not the place to do that. The reason for excluding firefighters is two fold. We only want to exclude firefighters when they are carrying out fire fighting activities and when they are carrying out rescues from fires. We might need to amend the wording if it goes beyond that. Obviously, if you are a firefighter doing something else like shopping and there is a fire, you are protected by the Order applying to the premises in which you might be doing the shopping.

Q101 Dr Naysmith: There is a number of other statutory tasks carried out by firefighters which do not involve dealing with fires and they should be protected when they are carrying out these duties. Would they be under the Order?
Phil Hope: We would not want to impose any massive burdens on businesses to provide extra protection for firefighters who are equipped to fight fires in those premises.

Q102 Dr Naysmith: They are excluded even when they are doing an assessment?
Phil Hope: Yes.
Mr Jack: We are very grateful to you for drawing to our attention that the drafting we have done can be construed as going slightly beyond what we intended to do. It could exclude a fire inspector when carrying out his inspection duties, or a firefighter.

Q103 Dr Naysmith: I hope you are going to deal with that.
Mr Jack: As it has been raised here, I think we will make the amendment and we will consult the Fire Service to ensure they are happy with it.

Q104 Dr Naysmith: In the draft Order there is no specific duty on the responsible person for premises to offer reasonable assistance to firefighters who are attending an emergency at the premises. Is there a reason why not?
Phil Hope: This Order is about fire safety. The role of the citizen in assisting firefighters or perhaps not assisting them would be a matter for other legislation to do with responsibilities in the community which are not covered by the Fire Safety Order.

Q105 Dr Naysmith: As long as there is nothing that makes it harder for firefighters to carry out their job.
Phil Hope: It certainly does not result in that. Are you thinking about young people throwing stones at firefighters and that kind of thing? That would be covered obviously by the legislation to do with anti-social behaviour or whatever.

Q106 Chairman: How important is it that fire safety measures are not only enforced but are seen to be enforced?
Phil Hope: The wider community needs to know that if they are at work or conducting their business the premises they are in are safe and have the appropriate measures in place. The importance of publicity of these changes is quite important. Once we have reached agreement on the Order, it is important that guidance is available before we enact the Order so that businesses have time to develop their new procedures and they make these changes known to their own workforce in particular and also to anybody else in the building about what the measures are that are being put in place for their safety.

Q107 Chairman: The new system of risk assessment relies heavily on self-certification. Once self-certification is introduced, how can the public be confident that businesses are doing their risk assessments as the law requires them to do?
Phil Hope: On a very broad level, the integrated risk management plans of the local fire authority will provide at a general level an assessment of what those risks are and how they are to be responded to. The organisation or business that is responsible for the premises that people are working in or might be using for their shopping or whatever will need to display to make sure that the individuals who work there understand their responsibilities, where the fire exits are and all of that kind of thing. I do not think publishing the certificate necessarily is going to provide that kind of information, whereas responsibilities upon the organisation within the Order will provide more reassurance that, where there is higher risk, these organisations are taking their responsibilities seriously.

Q108 Chairman: If we look at high risk premises, a previous witness has suggested that they should have their fire safety risk assessments validated for a greater level of protection and public confidence. Why was a system of validation for high risk premises not included in the draft Order? Why did you not go along that route?
Phil Hope: The Fire Service will be making a judgment about where those high risk premises are. They will therefore be carrying on inspecting and ensuring that the organisation has put in place the appropriate measures, the necessary equipment, the escape routes and so on, targeting their efforts at those high risk premises to make sure this is carried out by the responsible person within the organisation concerned. Because you have this risk assessment approach, you target more help, more resource, more activity around these areas of high risk. This Order puts in place and embeds a system for giving more attention and ensuring greater measures of safety and protection for those areas of higher risk. That is in essence the core of what this Order is all about. Far from being a degradation of that, it is an enhancement of that very point.

Q109 Chairman: Did you give much thought to a system of validation or was it not thought to be the way in view of the line you are going down, because it is not apt to what is proposed?
Mr Jack: Having been involved with the Order and the previous elements of the reform, witnesses have mentioned the 1997 consultation which is where validation was originally mentioned. As part of the consideration of that, we looked very closely at the validation point. We brought it down to nuts and bolts to say, "What does validation mean? What will it be?" Working it through, the conclusion we drew was that what you are looking at is the enforcement authority attending premises and checking fire precautions, saying either, "Yes, these are okay" or, "Work needs to be done to improve them." That is, in essence, what validation is. The real question arising is should there be a piece of paper which says, "We came, we saw, we inspected and it was all okay." In looking at that point, we ran through a whole area of solutions to it, down to what was virtually an MOT certificate, a tear-off slip almost. We reached the conclusion again that that piece of paper would only be valid on the day when the enforcement authority turned up. Thereafter, as with the MOT, they could do anything they liked. There was, if anything, a false assurance being offered by a piece of paper such as that and indeed perhaps by a fire certificate under current terms. That is the reason why we have not taken it forward.

Q110 Chairman: It is the same with car insurance. You tax a car and you have to produce an MOT but it really only certifies the car on the day and the insurance can collapse the day after you have shown the policy and, if it is valid on that day, you can tax it for a year.
Mr Jack: Exactly.

Q111 Chairman: The validation certificate would not really add to the credibility of the scheme?

Phil Hope: It is the new process that really matters.

Q112 Mr Havard: The maintenance of the system is what you are alluding to and that is just a snapshot. I want to deal with enforcement by the fire authorities themselves. It seems that the proposal does not place a duty on them to develop any enforcement programmes. What guarantee do the public have that there will be consistent enforcement carried out to carry out the intentions of this legislation by the fire authorities?
Phil Hope: The draft Order does place a duty on the enforcing authority to enforce the Order and they must have regard to any guidance from the Secretary of State that we might issue on that subject. The authority then inspects, through the application of risk based inspections. We have guidance on that, those inspections and their frequencies for individual premises being targeted to address risk at the premises with the greatest risk to receive the highest priority of inspection. The number of premises may increase under the Order but many of these premises are already visited for other purposes so we do not foresee the number of inspections increasing. Rather, that the greater targeting of them means that we target the area of inspection and therefore the area of enforcement more accurately on those.

Q113 Mr Havard: You do not see the fact that there is not a requirement to develop a programme of inspections will mean that fire authorities will just do what they can do with the resources that they have at the time they have them and, as a consequence, certain places will slip through the net?
Phil Hope: No. The idea of producing a programme in that way has been overtaken by events. Subsequent to those ideas being thought through, we have introduced integrated risk management planning. That is the new approach that the Fire Service takes. We are publishing a national framework which is in effect a contract between the Government and the fire and rescue authorities for the activities they undertake and the work they do. That national framework will put in place a clear responsibility to get on with that job of ensuring that enforcement takes place. It is the combination of local integrated risk management plans and the national framework to ensure that this will result in the kind of enforcement that you are concerned about. Obviously, where there are minor breaches, we would expect there to be changes by the organisation to put things right. Where there needs to be formal action, it will be taken according to the circumstances of the case—i.e. where there has been failure to comply on a consistent and regular basis. The combination of an integrated risk management plan and annual action plan which is renewed and reviewed will kick the fire and rescue authorities into a different way of operating to ensure that they are enforcing where there is the greatest risk.

Q114 Mr Havard: That is your process for ensuring that there is sufficient rigour in terms of application by any given individual fire authority.

Phil Hope: That is the national framework.

Q115 Mr Havard: What happens if they do not do it? Where is the stick? Is the fire chief going to be on the fire, or what?
Phil Hope: We have the Fire Inspectorate which has a role to play in promoting good practice. We are introducing comprehensive performance assessments into the system too in the same way that local government and local fire and rescue authorities will be assessed. That performance framework will provide a mechanism for those fire and rescue authorities, whether chief officers or elected members, to be assessing their performance and for there to be clear indicators using BVPIs[2] on how they are delivering that and then to make their action plans to improve their performance where there are found to be weaknesses. That combination of the IRMPs, risk based management planning, the national framework, the contract and the performance framework, the CPA, will provide the necessary managerial pressure upon the services to improve their performance where it is found that they need to do so.

Q116 Mr Havard: This is about resources. Some people would say this is about lifting burdens. One of the things it might do ironically, maybe accident rather than by design, is to lift obligations from the fire authorities. They may be spending too much of their time doing inspections in this permissive environment. As you said, they are doing the same for other things so that can be counted as an inspection. Is there not a danger here that maybe they are doing too many formal inspections and this now gives them the opportunity to do fewer?
Phil Hope: The real importance is not so much the number but the quality—i.e. where it is targeted, and the new approach of risk management and risk based inspection regimes means that those inspections that take place will take place where they are needed most—in other words, targeted at those areas with the highest risk. That will include a whole range of issues. We have had the first year of management plans and now we are beginning to roll them out, year after year, showing how the service is transforming itself to focus upon where there is greatest risk. Rather than create those kinds of burdens, I think it will help the service to help itself to build on good practice that is already going on in some of the better authorities.

Q117 Chairman: Can I turn to alterations notices? The proposed Order provides for alterations notices to be served on premises which constitute a serious risk. What sort of risk would you consider serious? The Chief Fire Officers considered that term a little vague and felt it needed a better definition. Are you able to tell us a little more about how you see that particular term "serious risk"?
Mr Jack: The "serious" we are referring to is the risk of death or injury in the event of a fire. It is a term which has been used previously in fire law for

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matters such as prohibition notices. It is a subjective term. I do not think there is a way round it. It has to be a professional making a judgment that the potential for someone to be killed or injured here is sufficient to warrant further action, as they would be in any form of enforcement activity.

Q118 Chairman: If you are saying you do not feel you could put it in a clearer way, do you think there is a danger that different fire authorities and agencies might have a different interpretation for what "serious risk" is?
Mr Jack: What we normally do and what we would expect to do on this occasion is to issue guidance to the Service about the Order, within which we would explain the sorts of circumstances where an alterations notice might be appropriate. That guidance is something the Fire Service must have regard to. It is issued by the Secretary of State so I would therefore expect there to be consistency across fire authorities so far as it is possible to achieve that.

Q119 Chairman: This is professional expertise?
Phil Hope: That is right. You are making the point—and I think it is right—that we do have an excellent fire and rescue service. In terms of making those judgments, they do understand what kind of changes might be needed. It would be appropriate for us to issue general guidance to ensure consistency and I think you have made that point well, but the judgment on the ground has to be a matter for the professionals. I think it is right that we have confidence in them to make that judgment, given that we can issue guidance to ensure there is consistency across the piece.

Q120 Dr Naysmith: You did some research I believe and found that between 46 and 58% of employers and businesses were aware of the present fire safety requirements, which is not all that high. I am sure those who have serious risks in their premises will be higher, or I hope they will be. If awareness of the present requirements is so low, how can you ensure that awareness of the new requirements is higher?
Phil Hope: We have to publicise this quite widely. The point being made is an important one. We need to produce guidance for those who are going to be responsible under the Order about what the law does mean for them and how they are going to meet their obligations under it. We will be producing a suite of guidance books specific to the use of premises that will provide much of what those individuals and organisations need. That will include an explanation of risk assessments and give practical guidance on fire prevention and precautions. The books are something like £12 to buy but you can download them free of charge. What is going to be very important is that accompanying these core booklets will be shorter information leaflets explaining the law and publicising what we are doing. We have to pay a lot of attention to this when we get further down the line because I recognise the dilemma when organisations do not know and we are putting this new responsibility on them. Therefore, there is a responsibility for us to ensure that information guidance is available.

Q121 Dr Naysmith: You are talking about for employers and for those who have to comply with that legislation. Will there be a real attempt to make sure that the public and presumably the people who work in these industries know about it as well so that they can bring pressure to bear to ensure that things are being done properly?
Phil Hope: That is very important. Indeed, we have a number of campaigns around about fire safety that we roll on a regular basis. I am thinking of the work we do on smoke alarms, for example. Recently, we had public campaigns on escape action plans in the home. Those kinds of public campaigns are something that I think we are used to doing and are effective. They are having an impact and further down the line we will be working on those campaigns to draw the attention of people to the kind of new approaches we are taking. It is horses for courses obviously, as to how you go about doing this. We need to find ways to make sure we get to the parts of the community that other campaigns have failed to reach.

Q122 Mr Norman: Can I just press you, Minister, briefly on this question of guidance because you have referred to guidance books and clearly for enterprises, whether in the public or private sector, the guidance becomes critical and in a sense it becomes the new regulation and to decide to go against the guidance is quite a big decision to take. What comfort can you give us that the guidance would actually tread the right balance between not being excessively burdensome and detailed and yet at the same time providing clarity in terms of how to interpret the regulation? When you talk about books, to a lot of people in enterprises that sounds pretty forbidding.
Mr Hope: Well, to explain first of all, we consulted before they were published, Chairman, which was absolutely crucial, but, for example, the title of books might include, "Shops and Offices", or "Factories and Warehouses", in other words, books which are specifically targeted at different types of premises so that depending on the reader, they will see, well, they will have access to all of them of course, but they will obviously want to read and get engaged with the one which is the most relevant to their particular role. I have to say that it is absolutely crucial that the aim of these guides is to be easy to understand, but, and this is a critical point, with enough detail so as to be of practical use for the individuals concerned to use them as the responsible person and indeed to be used by the enforcing authority when it comes to that dialogue between the fire and rescue authority and the particular organisation. We are going to be meeting, or my officials are going to be meeting, with various stakeholders, the CBI, the Federation of Small

Businesses and others to discuss what we hope will be the final draft of the first guide which will then be used as the template for the rest of the suite which will come through, so those principles of what they should be like, the way that they are targeted at different types of premises and the way we are engaging with various stakeholders to ensure that they do these things are the sort of criteria which we would want to achieve.

Q123 Mr Norman: You would accept then that the regulatory impact of this does depend on meeting that right balance and if you are a shopkeeper and today you have got a perfectly safe shop and a book arrives through the mail and you are obliged to read that book and confirm that you have done your regulatory risk assessment and you have got all the papers showing so, that would be a substantial increment in the burden on enterprise?
Phil Hope: I think, Chairman, we are particularly concerned about small businesses getting this right, small shopkeepers, whatever, and I would use the word that it is a small booklet, not a small book, and it is appropriately sized and in its detail for those individuals not to go, "Oh God", and put it to one side, but to take it; it is easier to read, easier to use and, therefore, they would feel confident that they are doing the right thing.

Q124 Mr Havard: Just to press the point earlier, I would hope that these guides would put this in its proper context of the legislative framework so that it did not seem as compartmentalised because it is the fundamental relationship as part of the policy statement and just to give people an idea of where it fits in the process would help a lot of people because otherwise they see them as one-offs.
Phil Hope: The first guide to offices and shops, Chairman, if it is helpful to the Committee, we could circulate a draft of the first guide to members.

Q125 Chairman: Well, I was going to ask you right at the end about the guidance because it would be helpful to us to see that because obviously we do believe, and there was a point made by the previous witness, that the new Order should not go into effect without the guidance being in, so if there is a draft, it would be helpful to the Committee.
Phil Hope: I will certainly give you that assurance and I would just say that the draft we would send you would be the one we have not yet consulted on with the stakeholders, just so that you are aware of that.
Chairman: We will accept it in that state.

Q126 Mr MacDougall: I have a very similar question to the one you just posed, Chairman, and that was to ask about the reasons why there is a need to make change, which always brings you back to the reasons that the current system gives you protection within it, so really what are the benefits of changing the system? Particularly if the changes bring about the same mechanisms, then why change them? What are the real benefits in the change? Where do you see the benefits will be?
Phil Hope: I think the benefits will be in the reduction in the number of people dying and getting injured from fire. I think it is as straightforward as that, Chairman. There will be burdens on business, that is for sure, but primarily what we are about here is fire safety and we are convinced, and we have done the work that you have seen in the papers, Chairman, that if implemented, this will have an impact. Now, the economists and those who do the risk analysis will argue about it, but we are talking between about 5 to 15% reductions in fire deaths and injuries and that is a substantial gain not only for the community, but the wider economic impact that fire can have. I am, therefore, absolutely convinced that the work that my officials have done with stakeholders has demonstrated that there is an appetite for putting this in place both to the benefit of saving lives and reducing burdens on businesses and targeting activity where it is highest.

Q127 Dr Naysmith: I fully agree with Mr Norman that there has to be a balance. The Engineering Construction Industry Association wrote to the Committee and said that there were fears that those who are really anxious to comply with the new legislation might over-react to it and do all sorts of things which were not necessary and that their concerns, and I quote, "may be amplified by the contribution of the fire safety consultancy". I think you have probably given us an assurance that the balance is going to be got right, but can I just follow up with maybe two more questions. Will it be the case that businesses which are presently fully compliant with the current fire safety legislation will be required to make any changes, even slightly procedural changes, and will it involve them in doing anything new that they are not doing now?
Phil Hope: No, I do not think they will. I think those businesses which are working to all the current requirements will not have anything new to do, although because this is about bringing together all of those requirements into one place to make it clearer, indeed it might help them in their understanding of their obligations and duties to see that and to reduce the burdens upon them, so I would be fairly confident to say that this is about not putting new burdens or responsibilities on the people who are already doing a good job, but it is actually trying to ensure that fire safety is captured right across the piece in a more systematic way.

Q128 Dr Naysmith: So it might well be that for such employers when the new guidance comes out, it might say something like, "Carry on as before"?
Phil Hope: Well, they will need to assess, against the guidance that we publish, their current procedures. If their current procedures are in line with all the current legislation, and we see that they will match, therefore, they will be able to say, "Good, this has been a good opportunity for us to review, check and to confirm that we are doing the right thing". It might be that they find some part of the guidance which makes them think, makes them conduct a

review and look again at some aspects of something which they are doing to make it safer. I cannot prejudge that, but what I can say is that there is no expectation that people who are already doing a good job will need to do anything different from or anything more than they are doing at the moment.

Q129 Dr Naysmith: This is probably unnecessary, but I will ask it. Is there any assistance of any sort for employers, possibly small business and so on, who will have to deal with this new legislation because, as you said before, only between 46 and 58% are aware of the current legislation, so if you really manage to get the publicity across and get more people compliant, you might find that some businesses need a little bit of help to get started?
Phil Hope: Well, indeed and the changing nature of the Fire Service with its new emphasis on fire safety means that those fire services are going to be in a better position to be able to respond to those kinds of requests to provide the kind of support and to provide the advice which those organisations, those companies and businesses might need to ensure that they are doing a good job. If this Order, combined with the Bill, creates a very positive developing relationship between the fire services and the communities they serve, then so much the better.

Q130 Chairman: Does any member have any final points? I was remiss earlier in not welcoming Mr Norman as a new member to the Committee. I hope that you find our proceedings of interest and we look forward to your taking part in the coming months. Minister, is there any final point which you would like to make to us?
Phil Hope: No, I understand that there are some detailed questions, some of which you have raised this morning, others you have not, which we are yet to reply to in writing to you. I will get those to you within the next two or three days, we hope, so that all the questions which either have been raised this morning or raised in writing to us will be answered in full within the next few days.

Q131 Chairman: That is very helpful. Our timetable is that we want to complete our report on the final Tuesday before we go into recess and to publish the report that week which will mean that the Department will have the recess in which to be able to consider it and come back later and then hopefully we can complete the proceedings. Can I thank you for coming along this morning. You have been very helpful to us and we look forward to receiving the guidance and the answers to the questions to which you have referred.
Phil Hope: Thank you very much.

Supplementary memorandum from the Head of Fire Safety Legislation Branch, Office of the Deputy Prime Minister

Definition of "Escape"

In evidence to the Committee, the Fire Brigades Union suggested that the term "escape" should be defined in the RRO. The FBU noted that, in relation to the Fire Precautions Act 1971, problems had arisen with occupiers terminating means of escape in enclosed courtyards which although away from the building (and so the scope of the fire certificate) could not be regarded as a place of safety in the event of a fire. As a result a definition of "escape" had been added to the Act. The Union also noted that the definition of premises in the RRO is much wider than in the Fire Precautions Act and the protection afforded by the RRO would also apply to relevant persons in the vicinity of the premises who may be placed at risk by a fire on the premises.

ODPM would draw to the Committee's attention that under the Order as drafted, it is necessary for the responsible person to consider the risk to persons and in and around any place for which they have responsibility. Consequently provision of means of escape from the premises to a place of safety could not result in the means of escape ending in an area in the vicinity of the premises where relevant persons would still be at risk in case of fire.

Therefore, the reasons why it was necessary to define "escape" in the Fire Precautions Act 1971 simply do not arise in relation to the RRO and we do not think it is necessary to include such a definition.

Use of "Where Necessary" in Articles 13 and 14 of the Draft Order

In response to a question from the Committee, the matter of use of the term "where necessary" was discussed. I believe this was a point raised by the Fire Brigades Union when giving evidence. I drew attention to the preliminary note to the Directive and it may assist the Committee if I expand on what was said at the time.

There are two elements to the assertions made by the Fire Brigades Union and the Chief Fire Officers' Association in evidence to the Committee about use of the term "where necessary".

The first is that, in the view of the FBU, use of the term may contravene the requirements of European Directive 89/654/EEC.The second is that it may remove necessary protection.

The two points are inter-linked and I will deal with the European point first.

Attention was drawn by the Fire Brigades Union to the minimum requirements laid down in Annexes 1 and 2 of the Directive—notably paragraphs 4.1 to 4.7—which concern means of escape—and paragraphs 5.1 and 5.2 which concern fire fighting equipment. The FBU suggest that these are absolute requirements. That is not the case. The preliminary note (paragraph 1) to the Annex states that

"the obligations laid down in the Annex apply whenever required by the features of the workplace, the activity, the circumstances or a hazard"

We have built that caveat in to Articles 13 and 14 by use of the term—"where necessary"—as we did for the Fire Precautions (Workplace) Regulations.

On the second point about necessary protection, we do not believe such protection is removed. Indeed, how could it be removed by a regime that requires these fire precautions to be present when they are necessary to safeguard the safety of persons? Of course the regime would not require precautions to be present when they are not necessary. But if they are not necessary to protect people then we take the view that the precautions are not providing a necessary protection.

I should explain that although it may have been possible under the Fire Precautions Act to require a particular fire precaution be in place regardless of risk, the European Directive based Fire Precautions (Workplace) Regulations over-ride that and a risk assessment showing the provision is not necessary would require the fire authority to change the fire certificate. So the proposal, which maintains the level of protection provided by the fire regulations, takes nothing away from the level of necessary protection.

Read Across to Health and Safety Legislation

During discussion on 29 June, the question was asked about read across to health and safety legislation—with specific reference to use of co-terminous wording. It may be of assistance to the Committee to know that articles 8(a), 9, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, 23, 39, 40 and 41 are identical, or very similar, to existing health and safety requirements (in particular 8(a)—and the defence of so far as is reasonably practical). In developing the RRO we took great pains to ensure consistency with H & S. The enforcement provisions are also modelled on the 1974 Act.

One difference we have included is that so far as possible within the constraints of European law, the provisions are subject to a due diligence defence—which does not apply to health and safety regulations.

Publicity for the New Regime

In evidence we discussed the ODPM proposals for guidance and publicity. On the latter point, it may assist the Committee to know that we are developing, in conjunction with stakeholders, a publicity campaign to promote the new fire safety regime. A group consisting of stakeholders which includes those representing both the large business sector: the Confederation of British Industry, and also those representing the small business that is the Federation of Small Business and Small Business Service, meet on a regular basis with the aim of ensuring the formulation of an effective and informative publicity strategy.

With stakeholders we have identified that the micro to small business sector could be difficult to target and with this in mind it is likely that we will be writing to all businesses as well as undertaking other activities. We expect the activities undertaken will include publicity within Trade Association Publications and a leaflet to be distributed by stakeholders. Consideration is also being given to radio advertising as this is seen as an effective means of reaching the target audience. I should stress that no final decisions have yet been taken on the detail of the media to be used and work continues in this area.

ODPM recognise the possible need for further advertising beyond the initial campaign and following the introduction of the new regime. We are therefore looking into this (together with stakeholders), taking into account other publicity activity that may be underway at the time—both by ODPM and the stakeholders we are working with.

7 July 2004

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