

**THE REGULATORY REFORM (FIRE SAFETY) ORDER  
STATEMENT BY THE OFFICE OF THE DEPUTY PRIME MINISTER**

**INTRODUCTION**

1. This statement is laid before Parliament in accordance with section 6 of the Regulatory Reform Act 2001 ("the 2001 Act") together with the draft of the Regulatory Reform (Fire Safety) Order 2004 ("the draft Order") which is proposed to be made under section 1 of that Act. The purpose of the draft Order is to reform the law relating to general fire safety in non-domestic premises.
2. The aim of the proposed reform is to reduce burdens on business that are caused by the existence of multiple, overlapping general fire safety regimes – and consequently overlap of the responsibilities of enforcing authorities. The proposed order would consolidate and rationalise much existing fire safety legislation (currently scattered across a large number of statutes and secondary legislation) into one order. In doing so it would reduce the number of enforcing authorities dealing with general fire safety matters. The reform would maintain and enhance the protection afforded to users of premises (and others who might be affected by a fire on the premises) by the existing legislation.
3. The Government consultative document "A consultation paper on reform of fire safety legislation" (published 22 July 2002) set out in detail the Government's proposals. Chapters 4 to 6 of the consultative document – which cover the proposals made, including the questions posed to consultees are given at Annex A.
4. Existing fire safety legislation has developed in piecemeal fashion, often as a response to particular tragic fires in which large numbers of lives were lost. As a result, fire safety provision is scattered among many pieces of legislation. It is sometimes inconsistent and can be difficult even for fire safety professionals to understand. For the lay person who has to comply with the legislation, it can be bewildering.
5. The aim of the reform is to simplify, rationalise and consolidate existing legislation. It would provide for a risk based approach to fire safety allowing more efficient, effective enforcement by the fire and rescue service and other enforcing authorities.
6. The key proposals on which the Government consulted were:
  - so far as possible, the reform should create one simple fire safety regime applying to all workplaces and other non-domestic premises;
  - the regime should be risk assessment-based with responsibility for the fire safety of the occupants of premises and people who might be affected by a fire resting with a defined responsible person;

- there should be no separate formal validation mechanism for higher-risk premises. Fire authorities would base their inspection programmes on their assessment of the premises they considered to present the highest risk;
  - there should be a duty to maintain those fire precautions required under building regulations, and other similar legislation, which are for the use and protection of fire-fighters;
  - there should be a new statutory duty on fire authorities to promote community fire safety, for powers of entry for the investigation of fires, and for a power to take away samples for testing.
7. These proposals would affect employers and virtually all those who are responsible for non-domestic premises. For employers, the proposals would not impose significant additional burdens since they would recreate requirements which already exist under the Fire Precautions (Workplace) Regulations 1997, the Management of Health and Safety at Work Regulations 1999 and the Dangerous Substances and Explosive Atmospheres Regulations 2002. Many self-employed people and elements of the voluntary sector will be brought within the regime but these will already be subject to licensing requirements or the Health and Safety at Work etc Act 1974. Under that Act they will already be responsible for safety of people on their premises. The proposals merely clarify their specific responsibilities in respect of fire.
8. The removal of multiple and overlapping fire safety provisions and their replacement with a single fire safety regime would constitute the reduction of a significant burden - as would the removal of the need to apply for fire certificates and the costs associated with the issue of certificates.

## **BACKGROUND TO THE PROPOSALS**

### **Previous reviews**

9. Concerns over fire safety legislation led to two detailed Government reviews in the 1990s. The first, an internal review of the Fire Precautions Act 1971, conducted by the Home Office in 1993, concluded, among other things, that the Fire Precautions Act did not provide the most suitable legislative means of ensuring fire safety in the 1990s and beyond.
10. The recommendations of that review were built on by the Interdepartmental Review Team on Fire Safety Legislation and Enforcement, which reported in June 1994<sup>1</sup>. This body also took account of the recommendations of the Construction Task Force established by the

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<sup>1</sup> ISBN 0 85605 327 9

Department of Trade and Industry in 1993. The review team covered the operation and effectiveness of all fire safety legislation for which the Home Office, the then Department of the Environment and the Health and Safety Executive had responsibility. The thrust of its report was towards modernisation and rationalisation of the organisational and legislative arrangements. The Home Office, which then had overall responsibility for fire safety, did not accept the Interdepartmental Review recommendation that general fire safety should be dealt with under the Health and Safety at Work etc Act 1974. We believe that that Act continues to be the right place to deal with *process* fire safety (specific fire safety measures required to deal with risks arising from manufacturing processes) since the fire risk elements of work processes need to be considered alongside other risks. But we prefer a separate legislative vehicle for general fire safety.

### **How the consultation proposals were developed**

11. In 1997 the Government issued its consultation document *Fire Safety Legislation for the Future* which set out broad proposals for the reform of fire safety law. We said then that we should seek an opportunity for a radical overhaul of the existing legislation; that it should be rationalised and that a new modern approach, based on risk assessment, should be adopted. Those proposals were broadly welcomed, and in the intervening years there have been a number of developments which have brought us to the stage where we can now act to provide a modern legislative framework for fire safety.
12. In December 1997 the Fire Precautions (Workplace) Regulations came into force. They were amended in 1999 so as to apply to a wider range of premises including those already subject to the Fire Precautions Act 1971. In many ways these Regulations establish the principles of fire risk assessment which would underpin a reformed legislative framework for fire safety.
13. In August 2000 we established the Fire Safety Advisory Board to provide a strategic forum for fire safety. One of the first acts of the Board was to establish a sub-group to build on the proposals set out in *Fire Safety Legislation for the Future* and produce detailed recommendations for change. The sub-group, like the Board, included representatives of industry and trade as well as fire service interests and Government departments. As a result, the detailed proposals were developed not only by those who make the law and enforce it, but by those who would have to comply with it. These stakeholders were also closely involved in considering the results of the consultative exercise and so further developing the proposals into the form now being presented to Parliament for consideration.

### **The current position**

14. At present, there are two major pieces of specific fire safety legislation, the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997. Both apply in England and Wales and Scotland. As fire safety is a matter within the devolved competence of the Scottish Parliament, our proposals for reform would only apply in relation to England and Wales. It will be for the Scottish Executive to consider the scope for parallel changes in Scotland. Officials in the ODPM, Scottish Executive and Scotland Office have been liaising as the proposals in the draft Order have been developed. Similarly, any reform of fire safety legislation in Northern Ireland would be considered separately. Provisions relating to fire precautions are also contained in numerous other pieces of legislation which are not principally related to fire safety.

#### Fire Precautions Act 1971

15. Fire safety legislation, up to the introduction of the Fire Precautions Act 1971, developed in response to a number of serious fires, in particular at Eastwood Mill, Keighley in 1956, Hendersons' Department Store, Liverpool in 1960, and the Rose and Crown in Saffron Walden in 1969.

16. Under the Fire Precautions Act 1971, the use of certain types of premises was designated by the Secretary of State as requiring a fire certificate. There are two designating orders in force in Great Britain. One relates to hotels and boarding houses and the other to those factories, offices, shops and railway premises in which people are employed to work.

17. The hotels and boarding houses which require a fire certificate are those which provide sleeping accommodation for more than six people (whether employees or guests) or if they provide sleeping accommodation for employees or guests elsewhere than on the ground or first floors of the premises. With respect to factories, offices and shops, a fire certificate is required where more than 20 people are at work at any one time or more than 10 are at work at any one time elsewhere than on the ground floor. Certificates are also required for smaller factories where significant quantities of highly flammable substances are stored.

18. The Act requires the occupier of designated premises to apply for a fire certificate. This will be prepared by the fire authority (in practice the local fire brigade). Before issuing a fire certificate the fire brigade will inspect the premises and satisfy themselves that the means of escape in case of fire, the means with which the building is provided for securing that the means of escape can be safely used at all times, the means for fighting fire and the means for giving warning in case of fire are such as may reasonably be required.

#### Fire Precautions (Workplace) Regulations 1997

19. These Regulations were made to implement elements of two European Community directives on health and safety at work, the Framework Directive (89/391/EEC) and the Workplace Directive (89/654/EEC). They

apply to virtually all places where people are employed to work, the exceptions being construction sites, ships, mines and other areas covered by the Health and Safety Executive and other agencies. The Regulations, together with those elements of the Management of Health and Safety at Work Regulations 1999 and the Dangerous Substances and Explosive Atmospheres Regulations 2002 which impose requirements concerning general fire precautions, are referred to as “the workplace fire precautions legislation”. This legislation requires employers to carry out a fire risk assessment, identify the significant findings of the risk assessment, provide and maintain such fire precautions as are necessary to safeguard those who use the workplace and provide information, instruction and training to employees about the fire precautions.

20. The fire precautions provided in accordance with these Regulations are intended to protect employees but must take account of other people present. Employers must take account of any duty of care their employees may have to other occupants of the building.

### **Legislative overlap**

21. This means that in a large number of premises, two separate fire safety regimes apply based on totally different philosophies. The central aim of the Fire Precautions Act 1971 is to ensure that, in the event of a fire, the occupants can evacuate the premises safely. The Fire Precautions (Workplace) Regulations 1997 require employers to identify risks and take steps to remove or reduce them. Some premises are also subject to licensing, certification or registration regimes under which yet more fire safety requirements can be imposed. These include licensing Acts, the Theatres Act, the Gaming Act, various children’s homes regulations and many others. This is highly confusing for businesses and as such places a burden on them.

### **CONSULTATION UNDERTAKEN (Section 6(2)(j) of the Regulatory Reform Act 2001)**

22. Prior to the public consultation exercise, the reform proposals were developed in conjunction with the Legislation Sub-group of the Fire Safety Advisory Board. The Board was set up to provide advice to Ministers on fire safety advice. Membership of the Board was:

Pamela Castle (Independent Chair)  
Professor A.R. Everton (Professor of Fire Law, Central Lancashire University)  
Federation of Small Businesses  
Her Majesty's Fire Service Inspectorate  
Association of British Insurers  
London Fire & Emergency Planning Authority  
Association of Building Engineers  
Retained Firefighters Union  
HMFSI Scotland

National Community Fire Safety Centre  
Buildings Regulations Division, ODPM  
Fire Brigades Union  
National Assembly of Wales  
Fire Industry Confederation  
Confederation of Scottish Local Authorities  
Fire Research Station  
Institute of Fire Engineers  
Chief and Assistant Chief Fire Officers Association  
Institute of Building Control  
Local Government Association  
Trades Union Congress  
Confederation of British Industry  
Fire Protection Association  
Scottish Executive Justice Department  
Fire Safety Legislation Branch, ODPM  
British Standards Institute  
Health and Safety Executive  
Fire Service College.

23. The Legislation Sub-Group consisted of:

Professor A.R. Everton (Professor of Fire Law, Central Lancashire University)  
Federation of Small Businesses  
Her Majesty's Fire Service Inspectorate  
Association of British Insurers  
London Fire & Emergency Planning Authority  
Buildings Regulations Division, ODPM  
Fire Brigades Union  
Fire Industry Confederation  
Chief and Assistant Chief Fire Officers Association  
Local Government Association  
Confederation of British Industry  
Scottish Executive Justice Department  
Fire Safety Legislation Branch, ODPM  
Health and Safety Executive  
Royal Institute of Chartered Surveyors Building Control Forum  
British Hospitality Association

24. The Sub-Group and the Board considered the initial proposals worked up by officials, made amendments where necessary and agreed the final form of the consultation document. This was then put up to Ministers to agree to publish the consultation document.

25. The consultation document "A consultation document on the reform of fire safety legislation" (previously sent to the Committee), was published by the Office of the Deputy Prime Minister in July 2002 and was publicised through a press release. The consultation was conducted in accordance with the code of practice on written consultation, and the consultation document was published on the following web-sites:-

- [www.odpm.gov.uk](http://www.odpm.gov.uk)
- [www.ukonline.gov.uk/CitizenSpace/CitizenSpace/fs/en](http://www.ukonline.gov.uk/CitizenSpace/CitizenSpace/fs/en)
- [www.cabinet-office.go.uk/regulation/act/condocs.htm](http://www.cabinet-office.go.uk/regulation/act/condocs.htm)

26. Prior to publication a wide range of companies and organisations across all sectors affected by the reform proposals were identified and were sent the consultation document at the time of publication. A list of these bodies is included in annex B.
27. As well as those listed in annex B a further 8,000 were sent out to various organisations that contacted the ODPM. Copies were made available on both the ODPM and Cabinet Office web-site, along with a Welsh language version of the consultation document. Arrangements were also made for responses and enquiries to be made to an e-mail address specially created for the exercise. This proved successful with many enquiries and responses being received by electronic means.
28. Although the official closing date for responses to the consultation exercise was November 22<sup>nd</sup> 2002, the ODPM agreed to take into account any late responses to the exercise.

### **REPRESENTATIONS RECEIVED (Section 6(2)(k) of the Regulatory Reform Act 2001)**

29. At the end of the consultation period a total of 276 responses had been received. The full list of those who responded is set out in annex B. Those respondents who said that they did not wish their name disclosed have been listed as "name withheld".
30. Following the close of the consultation period ODPM produced an analysis of the responses question by question. A copy of the analysis is attached at annex C. Full copies of the consultation responses have previously been sent to the committees.
31. The Legislation Sub-Group reconvened to analyse the responses further and to identify where proposals needed to be amended and which could be taken forward without need for further deliberation.
32. As well as the Group, ODPM held separate discussions with some of the organisations that had responded to the consultation including the Football Licensing Authority, the Institute of Licensing (listed as the Local Government Licensing Forum) and the Health and Safety Executive. Consultations with these and other parties continued right up to the draft Order being sent to the Committees. Other Government departments were also consulted during this time where legislation that they have responsibility for would be affected by the reform proposals.

## **CHANGES MADE TO THE ORIGINAL PROPOSALS IN THE LIGHT OF THE REPRESENTATIONS RECEIVED (Section 6(2)(I) of the Regulatory Reform Act 2001)**

33. The Government considers that the broad thrust of the proposals consulted on are reasonable, appropriate and proportionate. However, In the light of consultation responses and further discussions with stakeholders some adjustment to the original proposals has been made. The adjustments are set out below.
34. For the alterations notice procedure, a business would be obliged to notify the enforcing authority of any significant changes they propose. However, we have amended the original proposal so that this would not preclude the responsible person from undertaking the changes proposed. It would not be necessary to await agreement from the enforcing authority before starting work on proposed changes.
35. The proposed enforcement notice procedure would permit a notice to specify what must be done to secure compliance with the draft Order. In the light of the consultation, we now propose that the notice should permit reasonable alternatives to be used. This reflects both the need for certainty where that is needed and the need for flexibility - both of which are needed by business and by the enforcing authorities. The proposal as amended brings enforcement of fire law into line with enforcement of health and safety law and has been proposed following discussion and agreement with stakeholders through the Fire Safety Advisory Board.
36. In the light of comments about appeals, a new provision has been included which would allow the responsible person and the enforcing authority to agree to seek determination by the Secretary of State on technical issues. The determination would be binding on the enforcing authority. This would avoid the need to go before the courts on appeal against an enforcement notice when the matter to be considered is a purely technical matter – for example, the standard of fire alarm which is appropriate in the circumstances of the case.
37. In addition, the Government has considered the question of correlation with licensing law, taking into account the representations received and the passing of the Licensing Act 2003. As sections of the Licensing Act 2003 are brought into force the conditions of licence to be set will be those which are necessary for the furtherance of the licensing objectives. Consequently where specific legislation applies to cover the point – such as general fire safety under the draft Order - conditions could not be set.
38. For licences under other enactments, the proposals have been adjusted so that where a licence contains general fire safety conditions, these will be disapplied insofar as the matter is, or could be, dealt with under the draft Order. This carries forward the effect of section 31 of the Fire Precautions Act 1971 and would be applicable to all premises.

39. Enforcement of the draft Order for sports grounds has also been adjusted. Fire and Rescue Authorities would be restored to their position of being statutory consultees, as under the Fire Safety and Places of Sport Act 1987 and the Safety of Sports Grounds Act 1975, of the sports-ground licensing authority. The licensing authority would become the enforcing authority for the draft Order. This would avoid duplication and allow for safety certificates and the draft Order to work with each other under one enforcing authority
40. Some changes have been made to the application of the draft Order by defining what is a general fire precaution and what is a “special precaution” related to the carrying on of a work activity (i.e. specialist precautions needed due to the process being carried out) and so the subject of health and safety law enforced by the Health and Safety Executive.
41. The proposal to repeal sections 83 and 86 of the Fires Prevention (Metropolis) Act 1774 is not being pursued at this stage (although they are included in the consolidated version of legislation to be reformed which accompanies this statement). It is considered that further consideration must be given to repeal of these sections to ensure that any necessary protection provided by them is continued. The Law Commission has already identified the provisions as potential candidates for statute law repeal and removal of these sections of the 1774 Act will be taken forward on that basis. In the meantime, the draft Order would disapply the effect of section 86 (which provides that no action, suit or process can be brought against any person on whose premises a fire begins accidentally)<sup>2</sup> in relation to employers.
42. Finally, the proposals in respect of fire investigation and a duty of community fire safety care have been removed from the draft Order. These are being taken forward as part of the Fire and Rescue Services Bill, which is currently being considered by the House of Lords.

## **OVERVIEW OF THE REVISED PROPOSALS**

### Application

43. The draft Order would apply to most non-domestic premises used or operated by employers, the self employed and the voluntary sector. Exceptions would be offshore installations, means of transport, mines and bore-holes, and fields, woods and agricultural land. There are special considerations associated with these areas and consequently separate regimes for safety which would continue.
44. A clear demarcation would be drawn between “general” fire precautions as required under the draft Order and “special” precautions which are needed

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<sup>2</sup> This reflects the existing law in the Fire Precautions (Workplace) Regulations 1997 (as amended by S.I. 2003/2457) and the Management of Health and Safety at Work Regulations 1999.

directly in connection with a process – and which fall to be considered under health and safety and legislation. This would remove the confusion that exists under the current regimes.

### Responsible person

45. The person who is responsible for a place being used for an activity would be responsible for the safety of themselves and others who use the place. This would be:

- the employer (where there is one);
- the person in control of the premises in connection with the carrying on of a trade, business or other undertaking (for profit or not);
- the owner;
- any other person who to any extent exercises control over the place.

46. In consequence of European Community obligations where the premises are a workplace, the employer would have a duty to ensure safety on those premises. Other responsible persons would bear responsibility to the extent they can exercise control. In some premises more than one person might have some level of responsibility. “Any other person” would include contractors who take responsibility for installation and maintenance of fire precautions or preventative measures.

### The requirements

47. The regime proposed is based on assessment of risk, removal of hazards and protection of persons from hazards that remain. In this way it promotes the avoidance of fires and mitigation of the effects of fires to a level equal to the current position of securing safe escape. In doing so it does not detract from the need for precautions to ensure safe escape in case of fire.

48. The responsible person would be required to ensure that an assessment of the risk of, and from, fire is undertaken for the place and activity. Identified hazards would be removed or reduced so far as is reasonable and risks to persons avoided. Special consideration would be given to the risks posed by the presence of dangerous chemicals or substances and the risks that these pose in case of fire. Special consideration would also be given to any group of persons who may be especially at risk in case of fire, whether due to their location or any other factor. To protect persons, mitigation of the effects of a fire would be considered as part of the removal of risk and provision of protective measures (fire precautions).

49. All precautions provided would be subject to maintenance and would be installed and maintained by a “competent person” (as defined in the draft Order). The precautions to be maintained should include any provided for the use of fire-fighters in case of fire (e.g. fire-fighting shafts, access points, fire-fighting riser mains).

50. All persons in and around a place would be protected from the risks that remain by provision of appropriate fire precautions, including (but not exclusively) means for detecting and warning of fire, means for fighting fire, and means of escape. Plans would be made for the actions to be taken in case of fire and staff should receive appropriate training.

#### Enforcement of the Order

51. The main enforcing body would be the local fire and rescue authority. However it is recognised there are some special areas where it is more appropriate for another authority to enforce. Those identified and included are:

- the Health and Safety Executive - for nuclear installations, construction sites generally and ships under construction or repair;
- the fire service maintained by the Secretary of State for Defence for defence bases and visiting forces;
- the local authority with responsibility for issue of safety certificates – for sports grounds.
- Her Majesty's Inspectors of Fire Services – for Crown-owned or occupied premises generally (but see application to the Crown below).

#### Means of enforcement

52. The enforcing authority would be able to require work to be carried out to ensure the safety of persons - through the service of enforcement notices which would set out what provision of the draft Order has not been complied with, why that is the case and what action should be taken to remedy this. It would be possible for the notice to be framed to allow alternative solutions to be used.

53. In cases of extreme and urgent need it would also be possible for the enforcing authority to prohibit or restrict use of premises until such time as it has been made appropriately safe (by service of a prohibition notice).

54. In cases where premises could pose significant risk if any element of use or precautions are changed then there would be a mechanism for the enforcing authority to be notified of any proposed changes so that they can re-assess where those premises should feature in a risk-based inspection programme. This is achieved through use of a discretionary alterations notice.

55. The rights of individuals would be protected by rights of appeal. In addition provision to allow determination of differences of opinion of a solely technical nature would be provided by a right to seek a determination from the Secretary of State.

## Offences

56. Failure to comply with the requirements of the draft Order, an enforcement, prohibition or alterations notice and obstructing an inspector would be offences. The level of penalty imposed by the courts would be on a par with that which exists in existing fire safety law.
57. Other than where precluded by European Community obligations, it would be a defence for a person to show they had done all that could reasonably be expected of them to avoid commission of an offence.

## Correlation with other legislative regimes

58. The draft Order would be the principal legislation for general fire safety. Consequently conditions of licences and permissioning regimes that cover the same general fire safety requirements as the draft Order should be disapplied.
59. Housing law applies to houses in multiple occupation. However insofar as they have common parts or may be used as a place of work the draft Order would apply to those common parts and workplaces.
60. For the protection of the individual and to avoid inconsistent enforcement and requirements, all public bodies with a legislative interest in any place would be required to consult the authority enforcing the draft Order before taking any action which may affect the fire safety arrangements. Equally, the authority enforcing the draft Order would be required to consult those other authorities before taking formal enforcement action (other than in cases of extreme need where use of premises needs to be prohibited due to the level of danger).

## Application to the Crown

61. The draft Order would bind the Crown. However the enforcement procedures would not be applied. The Government remains committed to removing Crown immunity from prosecution but will take this forward separately to ensure commensurate provision between fire and health and safety law.

## **AMENDMENTS TO PRIMARY LEGISLATION - EXISTING BURDENS, PROPOSALS TO REMOVE OR REDUCE THOSE BURDENS AND HOW ANY NECESSARY PROTECTIONS WILL BE CONTINUED; PROPOSALS TO RE-ENACT BURDENS (Section 6(2)(a),(b),(c) and (d) of the Regulatory Reform Act 2001)**

62. This part of the statement describes the burdens which are imposed by existing legislation, the proposals to remove or reduce those burdens and how any necessary protection provided by those burdens will be

continued. It also describes any burdens which it is proposed to re-enact.

63. To give effect to the removal of burdens by consolidating fire safety regimes, the Government proposes to amend existing primary legislation that covers general fire safety so that the draft Order would be the fire safety legislation applicable to most premises. The revocations and amendments listed below are proposed in the light of consultation. They would remove burdens, but through the application of the proposed risk-based regime the necessary protection would be continued and enhanced. In each case listed below, the burden created by the existing Act, how that burden will be removed and how necessary protection will be continued is identified.
64. In addition to the amendment of primary legislation, amendments will be made to secondary legislation. These amendments will be consequential on the creation of the new regime and reflect its application and the need to remove reference to existing fire safety requirements in existing law. There are also some amendments to primary legislation which are purely consequential or incidental in nature and which are not dealt with in the text below. They are amendments to the Celluloid and Cinematograph Film Act 1922, the Fire Services Act 1947, the Rent Act 1977, the Zoo Licensing Act 1981, the Food Act 1984, the Housing Act 1985, the Bournemouth Borough Council Act 1985, the National Health Service and Community Care Act 1990 and the Capital Allowances Act 2001.
65. The proposals detailed below would have the effect of removing overlapping general fire safety requirements and leave the draft Order as the main applicable legislative regime for securing the safety of persons from fire. The second effect of the proposals would be to place responsibility for enforcing general fire safety with the authorities identified by the draft Order (principally the fire authority for the area in which the premises are situated). This would remove the overlap of enforcing authorities that exists under existing legislation.

### **London Building Acts (Amendment) Act 1939**

66. This Act principally imposes burdens on the owner and occupier of certain buildings in Inner London (including warehouses above a certain size and buildings over certain height limits).
67. Section 20 gives the Council power to attach conditions, when approving plans for work on such buildings, for the provision and maintenance of fire alarms, automatic fire detection systems and other fire prevention measures. Section 20(2C) provides that the Council may impose additional conditions, in respect of any special fire risk area, for the provision and maintenance of “proper arrangements” for lessening the danger from fire. Failure to comply with a condition is an offence<sup>3</sup>.

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<sup>3</sup> See section 148. The maximum penalty is a £2500 fine and a daily fine of £50 for a continuing offence. See also section 88 which provides for the service of a notice of “irregularity” where any building is being erected in contravention of the provisions of the London Building Acts. This imposes

68. Section 34 provides that various categories of “new building” (as defined in section 33) must be provided with such means of escape in case of fire as are reasonably required by the circumstances of the case. Subsection (2) requires the owner of any such building to deposit 2 copies of the plans for the new building with the Council. Subsection (4) prohibits the occupation of the building until the Council (or tribunal on appeal) have issued a certificate that the means of escape have been approved and that any conditions attached have been complied with. Failure to provide adequate means of escape or contravention of subsection (4) is an offence<sup>4</sup>.
69. Section 35 concerns fire precautions in certain “old”<sup>5</sup> buildings, including certain places of assembly, workplaces and tenement blocks. If the Council considers that the building is not provided with proper and sufficient means of escape, they may serve a notice on the owner requiring the provision of adequate means of escape. It is an offence to fail to comply with such a requirement and an offence to occupy or permit to be occupied any part of a building after the making of a court order to enforce compliance<sup>6</sup>. The council is required to maintain a register of orders made under this subsection.
70. Section 36 imposes requirements in relation to certain buildings where there are projecting shops (i.e. buildings in which persons are employed or sleep which include a shop at street level which projects beyond the rest of the building for more than a specified distance). In such cases, the projecting portion of the shop is required to have a roof with a degree of resistance to fire as the Council determines. Failure to comply with section 36 (and 37, 38 and 133) is an offence<sup>7</sup>. Section 37 requires the roofs of certain “old” buildings (including old buildings to which section 36 applies) to be accessible from inside the buildings.
71. Section 38 applies to buildings which are used for the storage of certain sorts of substances including petroleum spirits. In such buildings, section 38 prohibits the use of parts of such buildings as habitable rooms or workplaces if those parts are close to the part used for storage, unless adequate safeguards to prevent the spread of fire and adequate means of

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a burden by requiring the builder to remedy the faults within 48 hours. Section 90 empowers the court to make an order for compliance where a notice of irregularity has not been complied with. Failure to comply with a notice of irregularity is an offence subject to a maximum fine of £1000 (section 148).

Failure to comply with a court order is an offence subject to a daily fine of £50 (section 148).

<sup>4</sup> See section 148. The maximum penalty for failing to provide an adequate means of escape is a £2500 fine and a daily fine of £50 for a continuing offence. The maximum penalty for contravention of subsection (4) is a £1000 fine and a daily fine of £20.

<sup>5</sup> “Old building” is defined in section 33 as any building that is not a “new building”. In broad terms these are buildings existing before the Act was enacted.

<sup>6</sup> See section 148. The maximum penalty for these offences is a £1000 fine and a daily fine of £20 for a continuing offence.

<sup>7</sup> See section 148. The maximum penalty is a £1000 fine and a daily fine of £20 for a continuing offence.

escape have been provided, as required by the council. Any person who uses or lets a room be used contrary to this section is guilty of an offence<sup>8</sup>.

72. Section 133 imposes an obligation on the owner of buildings to ensure that any fire precautions and means of escape provided in pursuance of the 1939 Act are maintained in good repair and efficient working order. It also prohibits any person from interfering with them.
73. It is proposed to limit the effect of section 20 by removing reference to “maintenance” from subsections (2A) and (2C) and by removing provisions in subsection (2A) which duplicate provisions in Part B (fire safety) of Schedule 1 to the Building Regulations 2000<sup>9</sup>; to limit the effect of sections 35, 36 and 37 so that they only apply to certain domestic premises and to certain premises to which the substantive provisions of the draft Order do not apply; to repeal sections 34 and 38 and amend section 133 so that it does not apply in relation to premises to which the draft Order applies. This would reduce or remove the burdens imposed by those sections.
74. The necessary protection afforded to users of buildings by these provisions would be continued by Part B of Schedule 1 to the Building Regulations 2000<sup>10</sup> and by the substantive provisions of the draft Order (in particular, articles 17 and 38 which covers maintenance of facilities and articles 12 and 16 which concern measures to be taken in respect of dangerous substances).

### **Pet Animals Act 1951**

75. Section 1 of the Pet Animals Act 1951 provides for the licensing of pet shops. Subsection (3) requires the local authority, in determining whether to grant a licence, to have regard to the need for securing, among other things, that appropriate steps will be taken in case of fire or other emergency. It also requires the local authority to specify such conditions which appear to it to be necessary or expedient for securing that objective. Failure to comply with a condition is an offence<sup>11</sup>. Section 1(3) therefore imposes a burden on pet shop keepers and local authorities.
76. It is proposed to amend section 1 so that where the draft Order applies to the premises, the local authority cannot impose a condition relating to a matter which is or could be dealt with by or under the Order (e.g. general fire precautions). This would reduce the burden imposed by that section. Although the draft Order does not directly aim to protect animals from fire, the measures designed to protect persons will also have that effect. Since the draft Order would apply to pet shops and would impose or be capable

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<sup>8</sup> See section 148. The maximum penalty is a £1000 fine and a daily fine of £20 for a continuing offence.

<sup>9</sup> S.I. 2000/2531.

<sup>10</sup> Which imposes requirements related to fire safety on certain building work.

<sup>11</sup> Section 1(7). The maximum penalty is a £500 fine and / or 3 months imprisonment. The court may also order the licence to be cancelled and disqualify the person from holding a licence.

of imposing the same requirements as can be imposed by conditions under the Act, the necessary protection given to users of pet shops by these provisions would be continued (see in particular articles 8 to 22).

### **East Ham Corporation Act 1957**

77. This Act is a local Act applicable to the areas of local authorities lying within the former borough of East Ham. It imposes various burdens on the owners and occupiers of certain premises.
78. Section 62 gives the local authority power, for the purpose of preventing fire, injury or danger, to require the owner or occupier of certain buildings<sup>12</sup> to alter heating or lighting fittings etc. If the person served with the notice fails to carry out the required work, the local authority may carry out the work instead and recover the costs from that person. It is also an offence to fail to comply with a notice<sup>13</sup>.
79. Section 63 empowers the local fire authority to require provision of fire-fighters' switches for luminous tube signs and other similar apparatus. These switches allow the electricity supply to high voltage equipment to be cut off by the fire brigade when fighting fires - reducing the risk of electrocution through contact with water. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
80. Section 91 requires the consent of the local authority before a stand consisting of seating or standing accommodation for more than 20 people is erected. Consent may be given subject to such modifications of the plans and compliance with such maintenance requirements as the authority thinks necessary for ensuring the stability of the stand, protection against fire and general safety of persons using it. Failure to obtain prior consent, or failure to make the modification or comply with maintenance requirements is an offence<sup>14</sup>.
81. It is proposed to amend section 62(1) to remove the references to protection against fire, repeal section 63 and amend section 91 so that the local authority cannot impose a modification or requirement relating to a matter which is or could be dealt with by or under the Order (e.g. general fire precautions). This would reduce or remove the burdens imposed by those sections.
82. The burden imposed by section 63 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.

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<sup>12</sup> i.e. those to which section 24 of the Building Act 1984 applies, which includes some restaurants and shops but does not include a private house to which members of the public are admitted occasionally.

<sup>13</sup> The maximum penalty is a £2500 fine and £2 daily fine for a continuing offence. See also section 290 of the Public Health Act 1936 in relation to notices.

<sup>14</sup> The maximum penalty is a £50 fine with a daily fine for non-compliance.

83. The necessary protection afforded by these provisions would be continued by the substantive provisions of the draft Order. In particular articles 12 and 16 make specific provision for dangerous substances and article 37 provides for fire-fighters' switches.

### **Caravan Sites and Control of Development Act 1960**

84. This Act makes provision for the licensing and control of caravan sites. It imposes burdens on occupiers of land.

85. Section 5(1) provides that a site licence issued by the local authority may be issued subject to such conditions as the authority thinks necessary or desirable, in particular (among other things) for securing that, at all times when caravans are stationed on the land, proper measures are taken for preventing and detecting the outbreak of fire and adequate means of fighting fire are provided and maintained. ) Failure to comply with a condition is an offence<sup>15</sup>. Section 5(6) empowers the Minister to specify model conditions with respect to the layout of, and the provision of facilities, services and equipment for caravan sites which the local authority is required to have regard to when attaching conditions to a site licence. Where model conditions have been specified, the local authority is required to consult with the fire authority as to the extent to which any such conditions relating to fire precautions are appropriate to the land (section 5(3A)). Where no model conditions have been specified, the local authority is required to consult the fire authority as to what conditions relating to fire precautions should be attached instead (section 5(3B)). Section 8 empowers the local authority to vary conditions at any time, subject to giving the licence-holder an opportunity to make representations and subject to a requirement to first consult the fire authority. The 1960 Act therefore imposes burdens on local authorities (by requiring them to consult with the fire authority and to have regard to conditions specified by the Minister) and on licence holders.

86. It is proposed to amend sections 5 and 8 so that where the draft Order applies to the land, the local authority cannot impose a condition relating to a matter which is or could be dealt with by or under the Order (e.g. general fire precautions). This would reduce the burden imposed by that section. Since the draft Order would apply to caravan sites and would impose or be capable of imposing the same requirements as can be imposed by conditions under the Act, the necessary protection given by these provisions would be continued (see in particular articles 8 to 22).

### **Public Health Act 1961**

87. Section 75(1) of the Public Health Act 1961 gives local authorities the power to make byelaws for, among other things, preventing outbreaks of fire at pleasure fairs and roller-skating rinks, and for reducing the risk of, and the spread of fire, from such outbreaks. Having made such byelaws,

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<sup>15</sup> The maximum penalty is a £2500 fine.

the local authority is under a duty to enforce them. The effect of section 75(8) is that the local authority must consult with the fire authority before making byelaws which relate to fire precautions. The byelaws may provide that failure to comply with the byelaws is an offence and subject to a penalty of a fine not exceeding level 1 on the standard scale (i.e. £200), with an additional fine of £5 per day where there is a continuing offence. Section 75 therefore imposes burdens on the local authority and occupiers and owners of premises where fairs etc. are to be carried on as well as on persons carrying on such activities.

88. It is proposed to amend section 75 so that where the draft Order applies to a pleasure fair or roller-skating rink, the local authority cannot impose a condition relating to a matter which is or could be dealt with by or under the Order (e.g. general fire precautions). This would reduce the burden imposed by that section.
89. Since the draft Order would apply to pleasure fairs etc. and would impose or be capable of imposing the same requirements as can be imposed by conditions under the Act, the necessary protection given to users of fairs etc. by these provisions would be continued (see in particular articles 8 to 22).

### **Gaming Act 1968**

90. Schedule 2 to the Gaming Act 1968 sets out procedural requirements in respect of the grant, renewal, cancellation and transfer of gaming licences for premises. Paragraph 20 sets out the grounds on which a licensing authority may refuse to grant or renew a licence, including that the premises are unsuitable and the applicant is not a fit and proper person to be the holder of a licence. Paragraph 21 sets out the grounds on which a licensing authority may refuse to renew a licence, including (at (1)(f)) that, while the licence has been in force, appropriate precautions against the danger of fire have not been observed. Schedule 2 therefore imposes a burden on persons who wish to use premises for gaming.
91. It is proposed to amend Schedule 2 by adding a new ground to paragraph 20(1) that the draft Order has not been complied with and by providing that a person is deemed to be unfit if he has been convicted of an offence under the draft order and by repealing (1)(f). This will impose a new burden on potential applicants for licences under the Gaming Act by restricting the class of persons who can apply.
92. The extension of the grounds on which a licensing authority could refuse to grant or renew a licence under the Gaming Act 1968 imposes a minimal burden when compared with the existing powers available to a licensing authority under Schedule 2 - it could be seen as doing little more than making explicit what is already implicit in the powers. Even after such an amendment was made, the power to refuse to grant or renew a licence would be discretionary which would enable the licensing authority to take account of all material considerations and would be subject to an appeal.

The burden is therefore proportionate to the benefit of ensuring that gaming premises are safe.

### **Fire Precautions Act 1971**

93. The Fire Precautions Act 1971<sup>16</sup> is the principal Act concerned with fire safety on premises. It imposes various burdens on owners, occupiers and others who have responsibilities in relation to certain premises as well as burdens on fire authorities<sup>17</sup> and other local authorities. The existing burdens are set out in the following paragraphs.

94. Section 1 provides that a fire certificate issued by the fire authority is required in respect of premises which are put to a “designated use”. Subsection (2) gives the Secretary of State power to designate any use of premises which falls within the categories set out in that subsection, including use as, or for, sleeping accommodation, use for any purpose involving access to the premises by members of the public and use as a place of work. The scope of the power is wide although in practice it has only been used to designate use of premises as hotels and boarding houses and workplaces<sup>18</sup>. It cannot be used to designate premises which consist of a house occupied as a single private dwelling (section 2). Section 5(1) specifies that the application for a fire certificate must be made to the fire authority in the prescribed form and subsection (2) gives the fire authority power to require the provision of additional information. Neither section 1 nor section 5 specify who the applicant should be but section 7(1) provides that if premises are put to a designated use but do not have a fire certificate, the occupier of the premises is guilty of an offence (but see section 6(5) as described below).

95. Section 3 gives the fire authority power to make a fire certificate compulsory in relation to certain premises used as dwellings. A notice served under section 3 may be served on the occupier, the owner or a person having the overall management of the building in question (the “notified person”). That person is guilty of an offence if no fire certificate is in force (section 7(2)).

96. Where an application is made and pending its disposal, section 5(2A) imposes a duty on the occupier to secure that the means of escape in case of fire can be safely and effectively used at all times, the means for fighting fires are maintained in efficient working order and that instructions or training are given to employees of what action should be taken in the event of fire. Failure to comply is an offence (section 7(3A)).

97. Where an application for a fire certificate has been duly made, the fire authority is under a duty to, firstly, consider whether an exemption should

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<sup>16</sup> 1971 c. 40 amended substantially by Part 1 of the Fire Safety and Safety of Places of Sport Act 1987 c. 27.

<sup>17</sup> “Fire authority” is defined in section 43 by reference to the Fire Services Act 1947.

<sup>18</sup> See the Fire Precautions (Hotels and Boarding Houses) Order 1972 (S.I. 1972/238) and the Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989 (S.I. 1989/76).

be granted in respect of the premises, secondly, cause an inspection to be carried out of the relevant premises and, thirdly, to grant the certificate if the fire precautions specified in the application are such as may reasonably be required in the circumstances. Where the fire authority is not so satisfied, it is required to serve a notice on the applicant informing him of that fact and specifying steps that must be taken within a specified time before a certificate will be issued (section 5). The applicant, or occupier as the case may be, is required to pay the fire authority a fee for the issue of a fire certificate (section 8B).

98. Section 5A of the 1971 Act gives fire authorities power to grant exemptions from the need to hold a fire certificate in certain cases. The fire authority may require the applicant or occupier as the case may be to provide information to support the exemption (subsection (4)) and is required to inspect the premises unless an inspection has taken place within the previous 12 months (subsection (5)). If the authority decides to grant an exemption, it must notify the applicant or occupier of that fact (subsection (7)).
99. Section 6 sets out the contents of fire certificates and requires them to specify certain matters such as the use which the certificate covers and fire safety measures which must be taken (subsections (1) and (4)). It may impose additional requirements which the authority considers appropriate for certain specified purposes (subsection (2)). Subsection (5) provides that the occupier is responsible for ensuring compliance with the certificate. However, the fire authority can also provide in the certificate that some other person should be responsible for ensuring compliance in place of or instead of the occupier - if they consider it appropriate in the circumstances. This might, for example, be used to ensure that the owner or occupier of another part of the premises was responsible for ensuring compliance. The fire certificate is required to be sent to the occupier or notified person and kept in the premises so long as it is in force (subsections (8) and (9)). Failure to ensure that the requirements of the certificate are complied with is an offence (section 7(4)) as is failure to keep the certificate in the premises.
100. Section 7 deals with offences (described above) and sets out the penalties. For the majority of offences, these are a fine not exceeding £5000 on summary conviction or 2 years imprisonment and / or an unlimited fine on conviction on indictment. For failure to comply with section 5(2A) (fire safety measures pending disposal of application), the penalty is a fine not exceeding £5000 on summary conviction. Failure to keep a copy of the certificate is subject to a fine not exceeding £1000.
101. If, while a fire certificate is in force in relation to premises, it is proposed to make a material change to the premises or to the internal arrangements or the occupier proposes to begin to keep explosives or highly flammable materials in the premises, the occupier is required to notify the fire authority (section 8(2)). Occupiers of other parts of the premises are under a similar duty where they have been named as responsible for any

contravention of the certificate under section 6(5). On receipt of such a notice, the fire authority may give the occupier directions preventing the change taking place unless specified measures are taken and may also cancel the existing fire certificate. Where the measures are taken, the fire authority is required to amend the fire certificate or issue a new one. If the change is made without the proposal being notified, the occupier is guilty of an offence and is also guilty of an offence for failing to comply with a direction<sup>19</sup>. Where the fire authority are satisfied that the proposed changes would not result in the fire precautions in the premises becoming inadequate they are required to attach a copy of the notice to the fire certificate together with a written statement that they are so satisfied. Subsection (12) imposes further administrative burdens on the fire authority as regards amending notices. The applicant, or occupier as the case may be, is required to pay the fire authority a fee for the amendment of a fire certificate (section 8B).

102. Section 8A imposes similar notification requirements as section 8 where an exemption is in force in relation to the premises and creates a similar offence.

103. Premises which are exempt from the requirement for a fire certificate (either through an exemption provided in a designation order or granted by the fire authority under section 5A) are required to be provided with such means of escape and such means for fire-fighting as may reasonably be required in the circumstances of the case (section 9A). If contravened, the occupier is guilty of an offence and liable on summary conviction<sup>20</sup>. Section 9D empowers the fire authority to serve on the occupier an improvement notice where it considers that adequate precautions have not been taken under section 9A. The notice sets out the measures required to be taken to ensure compliance. Failure by the occupier to comply is an offence<sup>21</sup>.

104. The fire authority has power to serve a prohibition notice on the occupier in relation to any premises which may be designated under section 1 or to which section 3 applies where they consider that use of the premises involves or will involve a serious risk to persons in the premises in case of fire. The notice sets out the nature of the risk and directs that the use to which the notice relates is prohibited until the specified measures have been remedied. It may also include directions on the remedial steps which are required to be taken. It is an offence for any person to contravene any prohibition or restriction imposed by a prohibition notice<sup>22</sup>.

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<sup>19</sup> The maximum penalty is a £5000 fine in a magistrates' court or an unlimited fine and / or imprisonment not exceeding 2 years in the Crown Court.

<sup>20</sup> The maximum penalty is a £5000 fine.

<sup>21</sup> The maximum penalty is a £5000 fine in a magistrates' court or an unlimited fine and / or imprisonment not exceeding 2 years in the Crown Court.

<sup>22</sup> The maximum penalty is a £5000 fine in a magistrates' court or an unlimited fine and / or imprisonment not exceeding 2 years in the Crown Court.

105. Section 12 gives the Secretary of State to make regulations about fire precautions to be taken or observed in any premises which he has power to designate under section 1 or premises to which section 3 applies and where a notice is in force under that section. The regulations may impose requirements on persons other than the occupier, may provide for who is to be responsible for any contravention and may provide that that person is guilty of an offence<sup>23</sup>.
106. Sections 16 and 17 impose duties to consult between fire and other authorities. Section 16 requires a local authority to consult with the fire authority in certain circumstances before passing plans deposited in accordance with building regulations. Section 17 requires a fire authority to consult with the local authority and the Health and Safety Executive (if the premises are a workplace) before requiring certain alterations to premises.
107. Every fire authority is required to enforce the 1971 Act within their area (section 18). For that purpose, they may appoint inspectors who have various powers, some of which impose a burden on persons. These include power to require the production of the fire certificate (section 19(1)(c)) and power to require any person with responsibilities in respect of the premises to give him such facilities and assistance as are necessary (section 19(1)(d)). Failure to comply with such a requirement (or obstruction of an inspector) is an offence<sup>24</sup>.
108. Section 23 imposes criminal liability on directors and managers etc. of corporate bodies where the body commits an offence under the 1971 Act and the offence is committed with the consent or connivance or is attributable to any neglect on the part of that person. Section 24 provides that where an offence committed by a person is due to the act or default of some other person, that other person is guilty of the offence.
109. Section 28 gives county courts jurisdiction to set aside or modify terms and conditions of certain agreements and leases which prevent a person from carrying out work required under certain provisions of the Act. Where structural work is required, the court may also order another person with an interest in the premises to bear some of the expense and, if need be, change the amount of rent payable.
110. It is proposed to repeal the whole Act which would remove the burdens imposed by it.
111. The burdens imposed by sections 10 (prohibition notices), 12 (power to make regulations about fire precautions), 18 (duty of fire authority to enforce) and 16 (duty of local authority to consult fire authority before passing plans) would be re-enacted by the draft Order (see articles 31, 24, 26 and 45). The power in article 31 could only be exercised in

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<sup>23</sup> The maximum penalty is a £5000 fine in a magistrates' court or an unlimited fine and / or imprisonment not exceeding 2 years in the Crown Court.

<sup>24</sup> The maximum penalty is a £1000 fine.

circumstances where the enforcing authority considers that use of the premises involved or would involve a risk to persons which is so serious that the use should be prohibited. Although the burden is onerous this must be balanced against the serious risk to persons which must be present - it is therefore proportionate (see also the right of appeal in article 35). The power to make regulations about fire precautions would enable detailed requirements to be imposed in relation to particular types of premises, focused on the particular risks that those premises pose. An example of the use of the existing power is the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 which were made following the King's Cross fire in 1997. The burden imposed would be limited to the taking or observance of general fire precautions in respect of relevant persons (see article 5(5)) and any criminal proceedings would be subject to a defence of due diligence (see article 33). Since the measures would be aimed at protecting persons from fire, the burden would be proportionate to the benefit. Article 26 would require the enforcing authority to enforce the draft Order. It is obviously essential that the draft Order be properly enforced. Although article 26 would re-enact a burden, this would be proportionate to the overwhelming benefit of compliance with the draft Order and a removal or minimisation of risks to persons in the event of fire. Finally, the burden imposed by article 45 is modest when compared with the benefit of ensuring that buildings are constructed to be safe when used and is consequently proportionate.

112. Necessary protection is afforded by the Act in number of ways. The first is that where a use of premises has been designated by an order under section 1 of the Act then the occupier (or in some cases owner) is obliged to have such fire precautions as the fire authority deem necessary in the circumstances of the case to reasonably ensure the safe evacuation of all persons in case of fire. These precautions are listed in a fire certificate issued under section 5 of the Act. Prior to issue of the certificate the person responsible for the premises must comply with an interim duty (section 5(2A)). For designated premises which do not require a fire certificate, either section 9A or, for the workplace, the Fire Precautions (Workplace) Regulations 1997 impose obligations to take general fire precautions. The necessary protection is continued by the substantive provisions of the draft Order (in particular articles 8 to 22) which covers all of the matters which could be provided for by a fire certificate as listed in sections 6(1) and 6(2) of the 1971 Act and the duty imposed by section 9A and the 1997 Regulations.

113. Necessary protection is provided for by regulations made under section 12 of the Act which may cover fire precautions to deal with particular circumstances. Only the Fire Precautions (Sub Surface Railways) Regulation 1987 and the Fire Precautions (Workplace) Regulations 1997 have been made under the Act (the latter only made in part the remainder being under the European Communities Act 1972). Part of the protection afforded is the ability to act quickly to provide for special situations or circumstances by provision of regulations that are applicable only to a specialist area. This protection is continued in two ways. The matters

which can be provided for under section 12 regulations are covered by the substantive provisions of the draft Order. In addition article 24 of the draft Order would re-enact section 12.

114. Further necessary protection is afforded under section 8 of the 1971 Act by the holder of a fire certificate who must notify the fire authority if it is proposed to make changes to the premises (including the fixtures and fittings) which might affect the efficacy of the means of escape from the premises and so endanger the ability of persons to escape in case of fire. The fire authority can then take action to address these issues as part of their enforcement role. This provision only applies to premises which hold a fire certificate or which have been exempted by the fire authority from the need to hold a fire certificate. The necessary protection it affords would be continued and extended by article 29 of the draft Order which provides for alterations notices to be served at the discretion of the enforcing authority so that details of changes must be notified to them in cases where they are satisfied that a change to the premises of the types mentioned in section 8 of the 1971 Act may result in significant risk to persons.
115. Necessary protection is also provided by section 10 of the 1971 Act which provides emergency powers for the fire authority to prohibit or restrict use of premises in case of significant and imminent risk to persons. This protection is continued by Article 31.
116. Finally necessary protection is provided by requiring that the provisions of the Act must be enforced by the appointed enforcing authority (fire authority) and powers of entry are provided for this purpose. The powers allow the fire authority to inspect any premises other than a single private dwelling to ascertain application of the law and compliance with it. These powers are also used for the purposes of section 10 of the Act (emergency powers to prohibit or restrict use due to serious danger to persons). This necessary protection would be continued by articles 25 to 28 of the draft Order.

#### **Health and Safety at Work etc Act 1974**

117. The 1974 Act is the principal Act which regulates the health, safety and welfare of workers and those who may be affected by work activities and imposes burdens on employers, employees and others who have responsibilities in connection with work activities and workplaces. It imposes a general duty on employers to ensure the safety of their employees (section 2), a general duty on those carrying on an undertaking to ensure the health and safety of non-employees who may be affected by that undertaking (section 3) and a general duty to ensure that a workplace is safe for use by non-employees (section 4). The Act also empowers the Secretary of State to make regulations on specific aspects of health and safety. Failure to comply with the general duties or regulations made under the Act is an offence for which there are various penalties (see section 33). The scope of the Act is wide enough to cover general fire precautions in workplaces.
118. It is proposed to disapply the 1974 Act and any regulations made under it in relation to premises to which the draft Order would apply, in so far as the Act etc imposes requirements or prohibitions concerning general fire precautions to be taken in respect of those premises. This would reduce the burdens imposed by the Act and health and safety regulations. It is not proposed that the disapplication should apply to the Control of Major Accident Hazards Regulations 1999 which implement Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances.
119. The necessary protection provided to employees and others who may be affected by work activities by the 1974 Act and regulations made under it would be continued by the draft Order and the substantive duties which would impose equivalent duties on the responsible person in respect of general fire precautions. The main purpose of the proposed reform would be to provide a demarcation between the legislation covering such precautions and other health and safety legislation.

### **Safety of Sports Grounds Act 1975**

120. This Act provides for the certification of certain large sports grounds<sup>25</sup> and imposes a burden on the “responsible person”<sup>26</sup>. Section 2(1) provides that a safety certificate must contain such terms and conditions as the local authority considers necessary or expedient to secure reasonable safety at the ground when in use. Where a term or condition of the certificate is contravened, any responsible person is guilty of an offence<sup>27</sup>. Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance or, or to be attributable to any neglect on the part of, a director,

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<sup>25</sup> See section 1 as to power of Secretary of State to designate sports grounds.

<sup>26</sup> Defined in section 12(2) as a person who is concerned in the management of the sports ground in question or the organisation of any activity taking place at the time of the alleged offence.

<sup>27</sup> The maximum penalty is a £5000 fine in a magistrates’ court or an unlimited fine and / or imprisonment not exceeding 2 years in the Crown Court.

manager or secretary or other similar officer, that person is also guilty of the offence (section 12(7)).

121. It is proposed to amend the Act so as to prevent conditions of a safety certificate from requiring a person to contravene any provision of the draft Order, and to require the local authority to amend the safety certificate to the extent necessary to prevent the certificate requiring such a contravention. This would reduce the burden imposed by the Act by limiting the scope of conditions under a safety certificate.
122. It is also proposed to amend the provisions in the Act which require the local authority to consult certain persons before taking certain action - to ensure that the fire authority are consulted in all cases. This would remove an anomaly that excludes combined fire authorities<sup>28</sup> from being consulted.
123. Necessary protection is provided by the setting of conditions of a safety certificate. These would continue as at present but the requirements and prohibitions contained in the draft Order would take precedence. The necessary protection would therefore be continued by the Act and the draft Order together.

### **Greater London Council (General Powers) Act 1975**

124. Section 3 of the Greater London Council (General Powers) Act 1975 applies to any substance manufactured or stored on premises in Greater London which, in the opinion of the fire authority, is likely to involve a special hazard to fire-fighters. It imposes a burden on occupiers and users of the building as well as on the fire authority.
125. Section 3(3)(b) empowers the fire authority to prescribe warning signs giving information about the substance and the precautions to be taken in the event of fire. Section 3(3)(b) empowers the fire authority to require the occupier of the premises to display the sign in a conspicuous position and arrange for the substance to be stored in the manner required by the notice. The Secretary of State may give directions as to the warning signs to be prescribed and where he does so, the fire authority must comply with the direction (section 3(4)). Where requirements as to storage have been made under section 3(3)(b), no alteration in the manner of storage may be made which results in the requirements being contravened. Contravention of this is an offence<sup>29</sup>. Any person who removes a warning sign without reasonable excuse is also guilty of an offence and subject to a similar penalty (section 3(11)).
126. It is proposed to repeal section 3 which would remove the burden imposed by it. The necessary protection would continue to be provided by the application of the requirements of the Dangerous Substances

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<sup>28</sup> See section 6 of the Fire Services Act 1947.

<sup>29</sup> The maximum penalty is a £1000 fine and a daily fine of £20 for a continuing offence.

(Notification and Marking of Sites) Regulations 1990<sup>30</sup>, together with the substantive provisions of the draft Order.

### **County of South Glamorgan Act 1976**

127. This Act is a local Act applicable to the areas of local authorities within the former county of South Glamorgan. It imposes burdens on the owners and occupiers of certain premises
128. Section 27 requires the consent of the local authority before a stand consisting of seating or standing accommodation for more than 20 people is erected. The provision is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
129. Section 51 modifies the effect of section 60 of the Public Health Act 1936 (now re-enacted as section 72 of the Building Act 1984 - see paragraphs 247 and 248 for a description of the burden imposed by section 72). Section 51 modifies the effect of section 72 by applying it to a wider class of premises<sup>31</sup>. In addition to the burden imposed by section 72 as modified, section 51(2) empowers the local authority to require the person in control of the building to keep passages and gangways unobstructed. Failure to comply with such a requirement is an offence<sup>32</sup>.
130. Section 52 makes provision for fire-fighters' switches for luminous tube signs and other similar apparatus. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
131. Section 54 empowers the local authority to make byelaws applicable to temporary structures<sup>33</sup> for the purpose of ensuring the safety of persons using them, including byelaws for safe access, fire-fighting equipment and adequate gangways.
132. It is proposed to amend sections 27 and 54 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), amend section 51 so that it only applies to buildings used as a flat or flats or tenement dwellings and repeal section 52. This would reduce or remove the burdens imposed by those sections.
133. The burden imposed by section 52 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would

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<sup>30</sup> S.I. 1990/304.

<sup>31</sup> Section 72 applies to restaurants, shops and warehouses which have sleeping accommodation on an upper floor. Section 51 applies it to all restaurants, shops and warehouses.

<sup>32</sup> The maximum penalty is a £50 fine.

<sup>33</sup> Section 54 applies to tents, marquees or other similar structures to which the public are admitted, with or without charge, for the purposes of a fair, circus, show, game, public meeting or similar activity.

result (i.e. protection of fire-fighters) and is therefore proportionate.

134. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular articles 8 to 22) in respect of general fire safety and by article 37 in respect of fire-fighters switches.

### **Local Government, Planning and Land Act 1980**

135. Section 152(1) of this Act empowers the Secretary of State to direct by order that an urban development corporation shall have, in its area, the functions of fire authority under the Fire Precautions Act 1971 to the extent specified in the order. On the order coming into force, the corporation has the specified functions instead of or concurrently with the fire authority depending on the terms of the order, consequently the burdens imposed by the 1971 Act on fire authorities apply to urban development corporations<sup>34</sup>.

136. It is proposed to repeal section 152(1)(a) and (b) in consequence of the repeal of the Fire Precautions Act 1971. This would remove the burden imposed by that section. Section 152(1) does not provide any necessary protection as it simply enables the Secretary of State to determine that the urban development corporation will have the specified functions of a fire authority under the 1971 Act.

### **County of Merseyside Act 1980**

137. This Act is a local Act applicable to the areas of local authorities within the metropolitan county of Merseyside. It imposes burdens on local authorities and on the owner and occupier of certain premises.
138. Section 20 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
139. Section 48 provides that where plans are deposited in accordance with building regulations, the plans show that the building as erected or altered will provide sleeping accommodation or a workplace for more than a specified number of persons, and the premises will be put to a specified use, the local authority is required to reject the plans unless the plans show that adequate means of escape will be provided. This imposes a burden on the local authority. Section 49 requires that any means of escape provided in a building must be maintained by the owner in good condition and repair and in efficient working order. Failure to comply with section 49 is an offence<sup>35</sup>.

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<sup>34</sup> No order has to date been made.

<sup>35</sup> The maximum penalty is a £500 fine.

140. Section 51 empowers the local authority to require the owner or occupier of a public building to make changes to the lighting or heating fittings, the seating arrangements, the floor or any fireplaces or chimney for the purpose of ensuring the safety of persons using the building. If the person served with the notice fails to carry out the required works, the local authority may carry out the works instead and recover the costs from that person. Failure to comply with a notice is also an offence<sup>36</sup>. Section 51 is similar but not identical to section 62 of the East Ham Corporation Act 1957 (see paragraph 78 above).
141. Section 54 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
142. Section 57(2) empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. Subsection (3) requires any person who intends to install such equipment, to give 14 days notice to the local authority. Failure to give this notice or failure to comply with any byelaw is an offence<sup>37</sup>.
143. Part 10 of the Act concerns the registration of entertainment clubs. Section 69 requires the local authority to take into account certain matters when considering whether to register the club or in deciding whether to impose conditions - including whether proper fire precautions have been taken. The owner or occupier of an unregistered club or who contravenes a condition is guilty of an offence<sup>38</sup>.
144. It is proposed to amend section 20 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), to amend sections 48 and 49 so that they do not apply to premises to which the draft Order would apply, to amend section 51 to remove references to protection against fire to repeal sections 54 and 57 and to amend section 69 to remove fire precautions as a reason why consent may be refused or a condition imposed. This would reduce or remove the burdens imposed by those sections.
145. The burden imposed by section 54 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
146. The necessary protection provided by sections 20, 49, 51, 54, 57 and 69 would be continued by the substantive provisions of the draft Order and by Part B (fire safety) and Part J (combustion appliances and fuel storage

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<sup>36</sup> The maximum penalty is a £1000 fine and a daily fine of £2 for a continuing offence - see also section 290 of the Public Health Act 1936 in respect of notices.

<sup>37</sup> The maximum penalty is a £200 fine.

<sup>38</sup> The maximum penalty is a £500 fine.

systems) of Schedule 1 to the Building Regulations 2000<sup>39</sup> both of which impose requirements in relation to building work (which includes the erection or extension of buildings and the material alteration of buildings). Part B imposes requirements as to the means of warning and escape, provisions to prevent or minimise internal and external fire spread and provisions for the access and facilities for the fire service. Part J imposes requirements as to air supply, the discharge of products of combustion, protection of buildings from fire, provision of information, protection of liquid fuel storage systems and protection against pollution.

147. The protection provided by section 48 would be continued through statutory consultation with the authority enforcing the draft Order (or which will do so when the building is complete). The result would be that the applicant for building consent under the Building Act 1984 would have available details of the measures that would, in the opinion of the enforcing authority, need to be taken to comply with the draft Order post construction and can act accordingly.

### **West Midlands County Council Act 1980**

148. This Act is a local Act applicable to the areas of local authorities within the metropolitan county of West Midlands. It imposes burdens on owners and occupiers of certain premises.

149. Section 39 makes provision for the safety of stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).

150. Section 45 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).

151. Section 47(2) empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).

152. It is proposed to amend section 39 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions); and repeal sections 45 and 47. This would reduce or remove the burdens imposed by those sections.

153. The burden imposed by section 45 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would

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<sup>39</sup> Part J was substituted by S.I. 2001/3335.

result (i.e. protection of fire-fighters) and is therefore proportionate.

154. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular articles 8 to 22 and article 37) and by the provisions of Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000.

### **Cheshire County Council Act 1980**

155. This Act is a local Act applicable to the areas of local authorities within the county of Cheshire. It imposes burdens on owners and occupiers of certain premises.

156. Section 29 makes provision for the safety of stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).

157. Section 49 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).

158. Section 51 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).

159. Section 52 empowers the local authority to require the owner or occupier of a public building to make changes to the lighting or heating fittings, the seating arrangements, the floor or any fireplaces or chimney for the purpose of ensuring the safety of persons using the building. It is very similar to section 51 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 140 above).

160. Section 53 applies to fire hazards caused by the storage of highly flammable substances in trade buildings. Where such a hazard exists, the local authority may serve a notice on the occupier requiring the use to be discontinued or specified fire precautions to be taken. A person who contravenes such a notice is guilty of an offence<sup>40</sup>.

161. Section 56 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).

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<sup>40</sup> The maximum penalty is a £200 fine.

162. It is proposed to amend sections 29 and 56 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), to amend section 52 to remove references to protection against fire and to repeal sections 49, 51 and 53. This would reduce or remove the burdens imposed by those sections. The proposed amendment to section 72 of the Building Act 1984 would also reduce the burdens imposed by section 54(4) as it would limit the class of premises to which a notice can relate (see paragraph 252 below).
163. The burden imposed by section 49 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
164. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 9 to 22 and 37). In respect of section 53 provision for general fire precautions would also be provided by articles 8 to 22 and for prohibition etc by article 31. Provision in respect of specialist precautions linked to storage is also made under the Dangerous Substances and Explosive Atmospheres Regulations 2002. All necessary protection would therefore be continued.

### **West Yorkshire Act 1980**

165. This Act is a local act applicable to the areas of local authorities within the metropolitan county of West Yorkshire. It imposes burdens on owners and occupiers of certain premises.
166. Part 9 of the Act concerns the registration of entertainment clubs. It is very similar to Part 10 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 143 above).
167. Section 51 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
168. It is proposed to amend section 40 to remove references to fire precautions and repeal section 51. This would reduce or remove the burdens imposed by those sections.
169. The burden imposed by section 51 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
170. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular articles 8 to 22 and 37).

### **Isle of Wight Act 1980**

171. This Act is a local Act applicable to the Isle of Wight. It imposes burdens on owners and occupiers of certain premises.
172. Section 31 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
173. Section 33 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).
174. It is proposed to repeal sections 31 and 33. This would remove the burdens imposed by those sections. The burden imposed by section 31 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
175. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular articles 8 to 22 and 37).

### **South Yorkshire Act 1980**

176. This Act is a local Act applicable to the areas of local authorities within the county of South Yorkshire. It imposes burdens on owners and occupiers of certain premises.
177. Section 45 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
178. Section 46 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
179. Section 54 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
180. Section 58 empowers the local authority to require the owner or occupier of a public building to make changes to the lighting or heating fittings, the seating arrangements, the floor or any fireplaces or chimney

for the purpose of ensuring the safety of persons using the building. It is very similar to section 51 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 140 above).

181. Section 59 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).
182. It is proposed to amend sections 45 and 46 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), to amend section 58 to remove references to protection against fire and repeal sections 54 and 59. This would reduce or remove the burdens imposed by those sections.
183. The burden imposed by section 54 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
184. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22 and 37) and by the provisions of Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000.

### **Tyne and Wear Act 1980**

185. This Act is a local Act applicable to the areas of local authorities within the county of Tyne and Wear. It imposes burdens on owners and occupiers of certain premises.
186. Section 17 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
187. Section 18 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
188. It is proposed to amend sections 17 and 18 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). This would reduce the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22).

## **Greater Manchester Act 1981**

189. This is a local Act applicable to the areas of local authorities within the metropolitan county of Greater Manchester. It imposes burdens on owners and occupiers of certain premises.
190. Section 58 makes provision for the safety of stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
191. Section 59 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
192. Section 62 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
193. Section 66 empowers the local authority to require the owner or occupier of a public building to make changes to the lighting or heating fittings, the seating arrangements, the floor or any fireplaces or chimney for the purpose of ensuring the safety of persons using the building. It is very similar to section 51 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 140 above).
194. Part 9 of the Act concerns the registration of entertainment clubs. It is very similar to Part 10 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 143 above).
195. It is proposed to amend sections 58 and 59 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), to amend section 66 to remove references to protection against fire, to repeal section 62 and to amend section 78 to remove the lack of adequate fire precautions as a reason why consent may be refused or a condition imposed. This would reduce or remove the burdens imposed by those sections.
196. The burden imposed by section 62 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
197. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22 and 37).

## **County of Kent Act 1981**

198. This is a local Act applicable to the areas of local authorities within the county of Kent. It imposes burdens on owners and occupiers of certain premises.
199. Section 52 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
200. Section 54 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).
201. It is proposed to repeal sections 52 and 54. This would remove the burden imposed by those sections. The burden imposed by section 52 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
202. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22 and 37) and by the provisions of Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000.

## **Derbyshire Act 1981**

203. This Act is a local act applicable to the areas of local authorities within the county of Derbyshire. It imposes burdens on owners and occupiers of certain premises.
204. Section 16 makes provision for the safety of stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
205. Section 24 modifies the effect of section 60 of the Public Health Act 1936 (now section 72 of the Building Act 1984). It is very similar to section 72 and the burden is the same (see paragraphs 247 and 248 below).
206. Section 25 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
207. Section 26 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire

arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).

208. It is proposed to amend section 16 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions); to amend section 24 so that section 72 of the Building Act 1984 as modified only applies to buildings used as a flat or flats or tenement buildings; and repeal sections 25 and 26. This would reduce or remove the burdens imposed by those sections.
209. The burden imposed by section 25 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
210. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22 and 37) and by the provisions of Part B (fire safety) and Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000.

### **East Sussex Act 1981**

211. This Act is a local Act applicable to the areas of local authorities within the county of East Sussex. It imposes burdens on owners and occupiers of certain premises.
212. Section 34 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 below).
213. Part 9 of the Act concerns the registration of entertainment clubs. It is very similar to Part 10 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 143 above).
214. It is proposed to repeal section 34 and amend section 47 to remove lack of adequate fire precautions as a reason why consent may be refused or a condition imposed. This would reduce or remove the burdens imposed by those sections.
215. The burden imposed by section 34 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
216. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22 and 37).

## Local Government (Miscellaneous) Provisions Act 1982

217. The 1982 Act imposes miscellaneous burdens - including burdens on fire authorities, owners and occupiers of certain premises and on licence holders of sex establishments.
218. Sections 9 and 10<sup>41</sup> make provision for firemen's switches for certain high voltage luminous tube signs and similar apparatus. Their purpose is to ensure that such equipment is fitted with an emergency cut-off switch for use by fire-fighters to prevent electrocution while tackling a fire. Section 9 provides that a fire authority may resolve that section 10 is to apply to their area – and if they resolve this, they are required to publish notice of the resolution in a local newspaper. Section 10(2) prohibits the installation of certain luminous tube signs unless it is provided with a cut-off switch. The fire authority may impose requirements as to placing, colour and marking which switch must comply with (section 10(3)). The owner or occupier of the premises where the sign is to be installed must give at least 42 days notice to the fire authority showing where the switch is to be placed and how it is to be coloured or marked (section 10(5)). Where there is a pre-existing luminous tube sign the owner or occupier of the premises is required, within 21 days of the resolution under section 9, to the fire authority stating whether the sign is provided with a cut-off switch. Subsection (8) gives the fire authority power to require changes to the sign (either by requiring the provision of a switch or by requiring that the existing switch is changed).
219. Any owner or occupier of the premises where the signs are installed is guilty of an offence if he fails to ensure that the apparatus is fitted with the necessary switch, fails to comply with the requirements on marking, fails to give the notice required by subsections (5) or (7) or fails to comply with a notice served by the fire authority under subsection (8)<sup>42</sup>.
220. Schedule 3<sup>43</sup> to the Act prohibits the use of premises as a sex establishment<sup>44</sup> except under and in accordance with the terms of a licence issued by the local authority. Paragraph 8 provides that the authority may grant a licence on such terms and conditions and subject to such restrictions as are specified. Paragraph 13 empowers the authority to make regulations prescribing standard conditions applicable to licences for sex establishments. Where such regulations are made, all licences granted by the authority are deemed to be subject to the standard conditions unless expressly excluded or varied. The licence-holder (or the servant or agent of the licence-holder) is guilty of an offence if he

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<sup>41</sup> Section 10(11) was amended by the Licensing Act 2003, section 198 and Schedule 6(84); this amendment being made for consequential purposes.

<sup>42</sup> In each case the maximum penalty is a £1000 fine and a daily fine of £20 for a continuing offence.

<sup>43</sup> Schedule 3 was amended by the Licensing Act 2003, section 198 and Schedule 6(85); this amendment being made for consequential purposes.

<sup>44</sup> Defined in Schedule 3(2).

knowingly contravenes or knowingly permits the contravention of a term, condition or restriction specified in the licence<sup>45</sup>.

221. It is proposed to repeal sections 9 and 10 and amend Schedule 3 so that no term, condition or restriction can be attached to a licence insofar as it relates to any matter in relation to which requirements or prohibitions could be imposed by or under the draft Order. This would reduce or remove the burdens imposed by those sections.
222. The burden imposed by sections 9 and 10 would be re-enacted by article 37. The burden would be modest when compared with the benefit which would result (i.e. protection of fire-fighters) and is therefore proportionate.
223. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22 and 37).

### **Humberside Act 1982**

224. This is a local Act applicable to the areas of local authorities within the former county of Humberside. It imposes burdens on owners and occupiers of certain premises.
225. Section 13 makes provision for fire-fighters' switches for luminous tube signs. It is very similar to section 10 of the Local Government (Miscellaneous Provisions) Act 1982 and the burden is similar (see paragraph 218 above).
226. Section 15 modifies the effect of section 60 of the Public Health Act 1936 (now section 72 of the Building Act 1984). It is very similar to section 24 of the Derbyshire Act 1981 and the burden is the same (see paragraph 205 above).
227. Section 17 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
228. It is proposed to repeal section 13, amend section 15 so that section 72 of the Building Act 1984 as modified only applies to buildings used as a flat or flats or tenement buildings, and amend section 17 so that the local authority cannot make a byelaw relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by

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<sup>45</sup> The maximum penalty is a £20,000 fine.

the substantive provisions of the draft Order (in particular, articles 8 to 22 and 37).

### **County of Avon Act 1982**

229. This is a local Act applicable to the areas of local authorities within the former county of Avon. It imposes burdens on owners and occupiers of certain temporary structures.
230. Section 6 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using them, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
231. It is proposed to amend section 6 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). This would reduce the burden imposed by that section. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular, articles 8 to 22).

### **Cumbria Act 1982**

232. This is a local Act applicable to the areas of local authorities within the county of Cumbria. It imposes burdens on owners and occupiers of certain premises.
233. Section 27 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).
234. Section 28 modifies the effect of section 60 of the Public Health Act 1936 (now section 72 of the Building Act 1984). It is very similar to section 24 of the Derbyshire Act 1981 and the burden is the same (see paragraph 205 above).
235. Section 29 applies to fire hazards caused by the storage of highly flammable substances in buildings used as a workplace. It is very similar to section 53 of the Cheshire County Council Act 1980 and the burden is similar (see paragraph 160).
236. It is proposed to amend section 27 so that the local authority cannot make a byelaw relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), to repeal sections 27 and 29 and to amend section 28 so that section 72 of the Building Act 1984 as modified only applies to buildings used as a flat or flats or tenement buildings. This would reduce or remove the burdens imposed by

those sections.

237. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order and by the provisions of Part B (fire safety) and Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000. In relation to section 29 alternative provision is made by the Dangerous Substances and Explosive Atmospheres Regulations 2002 in respect of specialist precautions linked to storage. All necessary protection would therefore be continued.

### **Hampshire Act 1983**

238. This is a local Act applicable to the areas of local authorities within the county of Hampshire. It imposes burdens on persons who install, or cause to be installed, fire alarms in premises.

239. Section 14 prohibits the installation of auto-dialling fire alarms in premises unless notice has first been given to the fire authority of the proposed text which will automatically be passed on by the system and the fire authority has approved the text as sufficiently identifying the premises which the system is meant to protect. Failure to comply with this requirement is an offence<sup>46</sup>.

240. It is proposed to repeal section 14. This would remove the burden imposed by that section. The protection originally provided by this section has ceased to be necessary due to technological advancement that allows the premises to be identified in any event. Provisions of this type have already been removed from most other Local Acts and byelaws.

### **Staffordshire Act 1983**

241. This is a local Act applicable to the areas of local authorities within the county of Staffordshire. It imposes burdens on owners and occupiers of certain premises.

242. Section 27 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).

243. Section 28 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).

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<sup>46</sup> The maximum penalty is a £200 fine and a daily fine of £20 for a continuing contravention of a notice saying that the fire authority disapproves of the text of the message.

244. It is proposed to repeal section 27 and amend section 28 to remove the reference to protection against fire. This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order and by the provisions of Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000.

### **Building Act 1984**

245. Section 71 of the Building Act 1984<sup>47</sup> provides that where the local authority consider that a building is not provided with satisfactory entrances, exits, passages or gangways it must serve a notice requiring the owner to execute such work and make such provision as is necessary. Failure to comply with the requirements of a notice is an offence<sup>48</sup>. In addition to a fine, the local authority may execute the necessary works and recover the costs reasonably incurred in doing so. Where necessary in the interests of public safety, the local authority may apply to a magistrates' court for an order closing or restricting the use of the building. Section 71(3) requires the person having control of the building to take steps to secure that the means of entrance and exit etc. are kept free and unobstructed while persons are assembled in the building. Failure to comply with subsection (3) is an offence<sup>49</sup>.

246. Section 71 therefore imposes a burden on the owner of certain buildings<sup>50</sup> by empowering the local authority to require works to be carried out and to restrict the activities which might be carried on in the building, a burden on the person in control of such buildings by requiring measures to be taken in respect of the building and a burden on the local authority by requiring it to serve a notice under subsection (1) in certain circumstances. It also imposes a burden by providing sanctions for non-compliance.

247. Under section 72, where the local authority considers that a building is not provided with such means of escape in case of fire as are deemed necessary, from each storey higher than 20 feet from the ground, the authority is required to serve a notice requiring the owner or person proposing to erect the building to execute such work and make such provision as is necessary. Failure to comply with the requirements of a notice is an offence<sup>51</sup>. In addition to a fine the local authority may execute the necessary works and recover the costs reasonably incurred in doing so. Section 72 also applies, in theory, to proposed buildings as well as to existing ones, but section 72(5) provides that section 72 (and any provision of a local Act that has effect in place of section 72), does not apply in relation to a proposed building or extension where requirements of building regulations as regards means of escape apply.

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<sup>47</sup> 1984 c. 55.

<sup>48</sup> The maximum penalty is a £2500 fine and a daily fine of £2 for a continuing offence.

<sup>49</sup> The maximum penalty is a £2500 fine.

<sup>50</sup> See sections 71(5) and 24.

<sup>51</sup> The maximum penalty is a £2500 fine and a daily fine of £2 for a continuing offence.

248. Section 72 therefore imposes a burden on the owner of certain buildings<sup>52</sup> (but not, in practice, on persons proposing to erect such buildings) by empowering the local authority to require measures to be taken in respect of the building and a burden on the local authority by requiring it to serve a notice under subsection (1) in certain circumstances. It also imposes a burden by providing sanctions for non-compliance.
249. Section 81 empowers a local authority to give notices about demolition to a person on whom a demolition order or obstructive building order has been served under Part 9 of the Housing Act 1985<sup>53</sup>; to a person who appears to have begun or to be intending to begin a demolition to which section 80 otherwise applies; and to a person who has given a notice under section 80. The contents of such notices are dealt with in section 82. Section 81(6)(b) requires the local authority to send or give a copy of the notice to the Health and Safety Executive if it contains a requirement which is specified in section 82(1)(i) and if the premises are special premises (defined in subsection (7) as premises for which a fire certificate is required by virtue of regulations made under the Health and Safety at Work etc. Act 1974<sup>54</sup>).
250. Section 82(1)(i) provides that a notice given under section 81 may require the person to whom it is given to make such arrangements with regard to the burning of structures or materials on the site as may reasonably be required by the Health and Safety Executive if the premises are special premises. Failure to comply with the requirements of a notice is an offence<sup>55</sup>.
251. Sections 81 and 82 therefore imposes a burden on the local authority by requiring it to send a copy of the notice to the Health and Safety Executive and a burdens on the persons to whom a demolition notice is given by requiring them to comply with its requirements – as well as providing criminal sanctions for non-compliance.
252. It is proposed to repeal section 71 (which duplicates the provisions in the draft Order) and amend section 72 so that it does not apply to buildings where protection would be provided by the draft Order. It is also proposed to amend section 81 and 82 to remove references to special premises and the Health and Safety Executive (consequential on the revocation of the Fire Certificate (Special Premises) Regulations 1976 by agreement with the Health and Safety Executive<sup>56</sup>). This would reduce or remove the burdens imposed by those sections. Finally it is proposed to make amendments to sections 48, 51B and 126 which are consequential to the

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<sup>52</sup> See section 72(6).

<sup>53</sup> The reference to obstructive building orders was substituted by the Housing and Planning Act 1986, section 24(1) and Schedule 5(11); the reference to Part 9 was substituted by the Housing (Consequential Provisions) Act 1985, section 4 and Schedule 2(58).

<sup>54</sup> See the Fire Certificate (Special Premises) Regulations 1976 (S.I. 1976/2004).

<sup>55</sup> The maximum penalty is a £2500 fine and a daily fine of £2 for a continuing offence.

<sup>56</sup> See Schedule 4 to the draft Order.

repeal of the Fire Precautions Act 1971 and the making of the draft Order.

253. The necessary protection provided by sections 71 and 72 would be continued by the substantive provisions of the draft Order (in particular articles 8 to 22) and by the provisions of Part B (fire safety) in Schedule 1 to the Building Regulations 2000.

#### **County of Lancashire Act 1984**

254. This Act is a local act applicable to the areas of local authorities within the county of Lancashire. It imposes burdens on owners and occupiers of certain premises.

255. Section 32 applies to fire hazards caused by the storage of highly flammable substances in buildings used as a workplace. It is very similar to section 53 of the Cheshire County Council Act 1980 and the burden is similar (see paragraph 160 above).

256. Section 35 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).

257. It is proposed to repeal section 32 and to amend section 35 so that the local authority cannot make byelaws relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (in particular articles 12 and 16 in relation to dangerous substances).

#### **Cornwall County Council Act 1984**

258. This Act is a local Act and is applicable to the areas of local authorities within the county of Cornwall. It imposes burdens on owners and occupiers of spectator stands.

259. Section 20 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).

260. It is proposed to amend section 20 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). This would reduce the burden imposed by that section. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order.

#### **Leicestershire Act 1985**

261. This Act is a local Act and is applicable to the areas of local authorities within the county of Leicestershire. It imposes burdens on owners and occupiers of certain premises.
262. Section 21 makes provision for the safety of stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
263. Section 47 concerns auto-dialler fire alarms in premises. It is very similar to section 14 of the Hampshire Act 1983 and the burden is similar (see paragraph 239 above).
264. Section 48 applies to fire hazards caused by the storage of highly flammable substances in buildings used as a workplace. It is very similar to section 53 of the Cheshire County Council Act 1980 and the burden is similar (see paragraph 160 above).
265. Section 51 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using them, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
266. Section 54 gives the local authority power to require, by notice, the owner of a building to provide such means of escape in case of fire as they consider necessary. The section applies to any building<sup>57</sup> which exceeds 1 storey in height, in which the floor of any upper storey is more 4.5 metres above ground level. If the person served with the notice fails to carry out the required work, the local authority may carry out the work instead and recover the costs from that person. It is also an offence to fail to comply with a notice<sup>58</sup>. Section 54 applies in place of section 72 of the Building Act 1984 in Leicestershire.
267. It is proposed to amend sections 21 and 51 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), repeal sections 47 and 48 and amend section 54 so that it only applies to buildings used as flats or tenements. This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order (see in particular, articles 12 and 16 on dangerous substances) and by the provisions of Part B (fire safety) in Schedule 1 to the Building Regulations 2000. In respect of section 47, the protection originally provided is no longer considered to be necessary (see paragraph 240 above).

## **Clwyd County Council Act 1985**

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<sup>57</sup> Used as flats, tenements, an inn, boarding house, hospital, nursing home or other similar institution.

<sup>58</sup> The maximum penalty is a £2500 fine with a £2 daily fine for a continuing offence. See also section 290 of the Public Health Act 1936 in respect of notices.

268. This Act is a local Act applicable to the areas of local authorities within the former county of Clwyd. It imposes burdens on owners and occupiers of certain premises.
269. Section 21 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).
270. Section 23 applies to fire hazards caused by the storage of highly flammable substances in buildings used as a workplace. It is very similar to section 53 of the Cheshire County Council Act 1980 and the burden is similar (see paragraph 160 above).
271. Section 24 empowers the local authority to require the owner or occupier of a public building to make changes to the lighting or heating fittings, the seating arrangements, the floor or any fireplaces or chimney for the purpose of ensuring the safety of persons using the building. It is very similar to section 51 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 140 above).
272. Section 42 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
273. It is proposed to repeal sections 21 and 23, to amend section 24 to remove references to protection against fire and amend section 42 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order and by the provisions of Part B (fire safety) and Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000.

#### **Worcester City Council Act 1985**

274. This Act is a local Act applicable to the City of Worcester. It imposes burdens on owners and occupiers of certain premises.
275. Section 27 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).

276. Section 28 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using the, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).
277. Section 45 modifies the effect of section 72 of the Building Act 1984 by adding a new class of premises to which section 72 applies (namely premises used as offices where there is sleeping accommodation on upper floors). Otherwise the burden is the same as that imposed by section 72.
278. It is proposed to amend sections 27 and 28 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions) and to amend section 45 by removing the additional class of premises. The result will be that section 72, as modified, will only apply to buildings used in whole or in part as flats or tenement dwellings. This will reduce the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order.

### **Poole Borough Council Act 1986**

279. This Act is a local Act applicable to the borough of Poole. It imposes burdens on owners and occupiers of certain premises.
280. Section 6 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).
281. Section 12 empowers the local authority to require the owner or occupier of a public building to make changes to the lighting or heating fittings, the seating arrangements, the floor or any fireplaces or chimney for the purpose of ensuring the safety of persons using the building. It is very similar to section 51 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 140 above).
282. Section 13 applies to fire hazards caused by the storage of highly flammable substances in buildings used as a workplace. It is very similar to section 53 of the Cheshire County Council Act 1980 and the burden is similar (see paragraph 160 above).
283. It is proposed to amend section 6 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions); amend section 12 to remove references to protection against fire and repeal section 13. This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order.

284. It is also proposed to repeal section 16(3) which would be consequential on the repeal of the Fire Precautions Act 1971.

### **Berkshire Act 1986**

285. This Act is a local Act applicable to the areas of local authorities within the former county of Berkshire. It imposes burdens on owners and occupiers of certain premises.

286. Section 28 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).

287. Section 30 applies to fire hazards caused by the storage of highly flammable substances in buildings. It is very similar to section 53 of the Cheshire County Council Act 1980 and the burden is similar (see paragraph 160 above).

288. Section 31 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using them, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).

289. Section 33 modifies the effect of section 72 of the Building Act 1984. It is very similar to section 24 of the Derbyshire Act 1981 and the burden is similar (see paragraph 205 above).

290. Section 35 empowers the local authority to require the owner or occupier of a public building to make changes to the lighting or heating fittings, the seating arrangements, the floor or any fireplaces or chimney for the purpose of ensuring the safety of persons using the building. It is very similar to section 51 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 140 above).

291. Section 40 concerns auto-dialler fire alarms in premises. It is very similar to section 14 of the Hampshire Act 1983 and the burden is similar (see paragraph 239 above).

292. It is proposed to amend sections 28 and 31 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions), amend section 35 to remove references to protection against fire, repeal sections 30 and 40, and amend section 33 so that section 72 of the Building Act 1984 as modified only applies to buildings used as a flat or flats or tenement buildings. This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order and by the provisions of Part B (fire safety) in Schedule 1 to the Building Regulations 2000. In respect of

section 40, the protection originally provided is no longer considered to be necessary (see paragraph 240 above).

### **Fire Safety and Safety of Places of Sport Act 1987**

293. This Act provides for the certification of certain stands at sports grounds<sup>59</sup>. Section 27 provides that a safety certificate for a regulated stand must contain such terms and conditions as the local authority considers are necessary or expedient to secure reasonable safety in the stand when it is in use for viewing the specified activity. The terms and conditions may be such as to require alterations or additions to the stand. Where a term or condition of the certificate is contravened, any responsible person<sup>60</sup> is guilty of an offence<sup>61</sup>. Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager or secretary or other similar officer, that person is also guilty of the offence (section 36(8)). The Act therefore imposes a burden on the responsible person (and officers of a corporate body) by requiring them to comply with the terms and conditions of the certificate and by imposing criminal sanctions for non-compliance.

294. It is proposed to amend the Act so as to prevent conditions of a safety certificate from requiring a person to contravene any provision of the draft Order, and to require the local authority to amend the safety certificate to the extent necessary to prevent the certificate requiring such a contravention. This would reduce the burden imposed by the Act by limiting the scope of conditions under a safety certificate. It is also proposed to amend the provisions in the Act which require the local authority to consult certain persons before taking certain action - to ensure that the fire authority are consulted in all cases. This would remove an anomaly that excludes combined fire authorities<sup>62</sup> from being consulted.

295. Necessary protection is provided by the setting of conditions of a safety certificate. These would continue as at present but the requirements and prohibitions contained in the draft Order would take precedence. The necessary protection would therefore be continued by the Act and the draft Order together.

### **Plymouth City Council Act 1987**

296. This is a local Act applicable to the City of Plymouth. It imposes burdens on owners and occupiers of spectator stands.

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<sup>59</sup> As to application, see section 26.

<sup>60</sup> Defined in section 36(3) as a person who is concerned in the management of the sports ground in question or the organisation of any activity taking at the time of the alleged offence.

<sup>61</sup> The maximum penalty is a £5000 fine in a magistrates' court or an unlimited fine and / or imprisonment not exceeding 2 years in the Crown Court.

<sup>62</sup> See section 6 of the Fire Services Act 1947.

297. Section 7 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).

298. It is proposed to amend section 7 so that the local authority cannot impose a modification or condition relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). This would reduce the burden imposed by that section. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order.

### **West Glamorgan Act 1987**

299. This is a local Act applicable to the areas of local authorities within the former county of West Glamorgan. It imposes burdens on owners and occupiers of certain premises.

300. Section 41 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using them, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).

301. Section 42 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden is similar (see paragraph 80 above).

302. It is proposed to amend sections 41 and 42 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions). This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order.

### **Dyfed Act 1987**

303. This is a local Act applicable to the areas of local authorities within the former county of Dyfed. It imposes burdens on persons who install, or cause to be installed, fire alarms in premises as well as imposing burdens on owners and occupiers of certain premises.

304. Section 45 empowers the local authority to make byelaws applicable to temporary structures for the purpose of ensuring the safety of persons using them, including byelaws for safe access, fire-fighting equipment and adequate gangways. It is very similar to section 54 of the County of South Glamorgan Act 1976 and the burden is similar (see paragraph 131 above).

305. Section 46 makes provision for the safety of spectator stands. It is very similar to section 91 of the East Ham Corporation Act 1957 and the burden

is similar (see paragraph 80 above).

306. Section 48 empowers the local authority to make byelaws for securing that arrangements are made for preventing or reducing danger from fire arising in connection with oil-burning equipment installed in or on premises. It is very similar to section 57 of the County of Merseyside Act 1980 and the burden is similar (see paragraph 142 above).
307. Section 53 concerns auto-dialler fire alarms in premises. It is very similar to section 14 of the Hampshire Act 1983 and the burden is similar (see paragraph 239 above).
308. It is proposed to amend sections 45 and 46 so that the local authority cannot impose a modification or condition, or make a byelaw, relating to a matter which is or could be dealt with by or under the draft Order (e.g. general fire precautions) and repeal section 53. This would reduce or remove the burdens imposed by those sections. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order and by the provisions of Part J (combustion appliances and fuel storage systems) in Schedule 1 to the Building Regulations 2000. Provision in respect of specialist precautions linked to storage is also made under the Dangerous Substances and Explosive Atmospheres Regulations 2002. In respect of section 53, the protection originally provided is no longer considered to be necessary (see paragraph 240 above).

### **Environment and Safety Information Act 1988**

309. Section 1 of the Environment and Safety Information Act 1988 requires certain authorities to maintain a register of certain notices served by them. The Schedule to the Act sets out the authorities concerned and the notices which are required to be included in the register. It includes fire authorities in relation to prohibition notices served under section 10 of the Fire Precautions Act 1971. Section 1(1) requires the authority to maintain a register, ensure that it is adequately indexed, open to inspection by the public and supply copies on request. Section 3 sets out time limits for making the entries. Where the recipient of the notice claims that it includes information which relates to a trade secret or secret manufacturing process, section 4(2) requires the authority to follow certain procedures so as to avoid disclosing details of the trade secret etc. The Act therefore imposes a burden on fire authorities by requiring them to keep etc a register.
310. It is proposed to replace the reference to the 1971 Act with a reference to prohibition notices served under article 31 of the draft Order. This would re-enact the burden imposed by the Environment and Safety Information Act 1988 - the burden imposed on authorities to keep a register of such notices being proportionate to the benefit of ensuring public access to relevant information about premises.

## **Smoke Detectors Act 1991**

311. Section 1 of the Smoke Detectors Act 1991<sup>63</sup> provides that new dwellings must be fitted with adequate smoke detectors. If not so provided, the person who constructs or arranges for its construction is guilty of an offence and liable to a fine not exceeding £1000. Section 2 provides for the dispensation from or relaxation of the requirement for smoke detectors by the local authority. Where they refuse an application for dispensation and the applicant appeals to the Secretary of State, subsections (6) and (7) require the local authority to transmit to the Secretary of State a copy of the notice of appeal, copies of all documents submitted by the applicant and any written representations the authority wish to make as regards the appeal.
312. Section 4 provides that it is the duty of local authorities to enforce the provisions of section 1 in their areas. Section 5 concerns the effect of the Act on Part 2 of the Building Act 1984 (supervision of building work etc. otherwise than by local authority). Where an initial notice is in force in respect of the work and where the approved inspector<sup>64</sup> is required to give a final certificate by virtue of section 51(1) of the 1984 Act, the inspector cannot give the certificate unless he has taken reasonable steps to determine whether or not the new building has been fitted with adequate smoke detectors. If satisfied, the approved inspector is required to issue a certificate to that effect. The giving of false or misleading certificates is an offence<sup>65</sup>.
313. The Smoke Detectors Act 1991 therefore imposes a burden on the person who constructs or arranges for the construction of the dwelling by requiring them to fit smoke alarms, a burden on the local authority by requiring it to enforce section 1 in their area and to send copies of documents to the Secretary of State in the event of an appeal and a burden on approved inspectors by requiring them to determine whether adequate steps have been taken. It also imposes a burden by imposing criminal sanctions for non-compliance.
314. It is proposed to repeal the whole Act which would remove the burdens imposed by it. The necessary protection given to occupiers of new dwellings is also provided by building regulations made under section 1 of the Building Act 1984. Part B1 of Schedule 1 to the Building Regulations 2000 provides that "the building shall be designed and constructed so that there are appropriate provisions for the early warning of fire". Paragraph B1 is supported by section 1 of Approved Document B - "Fire Alarms and Fire Detection Systems. This will continue the necessary protection provided by the Act.

## **London Local Authorities Act 1995**

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<sup>63</sup> 1991 c. 37. The Act has never been commenced.

<sup>64</sup> See section 7(2) of the 1991 Act and Part 2 of the Building Act 1984.

<sup>65</sup> The maximum penalty is a £1000 fine.

315. Section 16 provides for the licensing of near beer premises<sup>66</sup>. Subsection (2) empowers the council to grant such a licence on such terms and conditions and subject to such restrictions as may be specified. Subsection (3) gives examples of such conditions which include conditions related to fire precautions. Section 18 allows the council to refuse a licence on specified grounds (including that proper precautions against fire on the premises are not being taken). Section 20(1) empowers the council to make regulations prescribing standard conditions applicable to all near beer licences and where such regulations are made, every licence is deemed to be subject to these conditions unless expressly excluded or amended.
316. It is proposed to amend sections 16, 20 and 22 of the London Local Authorities Act 1995 so that where the draft Order applies to the near beer premises, the local authority cannot impose a term, condition or restriction, or prescribe standard conditions, relating to a matter which is or could be dealt with by or under the Order (e.g. general fire precautions). It is proposed to amend section 18 so that where the draft Order applies to the premises, the only fire safety grounds for refusing a licence are that the Order or any regulations made under it are not being complied with in respect of the premises. This would reduce the burdens imposed by those sections by limiting the subject-matter of terms, conditions and restrictions. The necessary protection provided by these provisions would be continued by the substantive provisions of the draft Order.
317. It is also proposed to amend the definition of “fire authority” in section 2 consequential to the draft Order.

## **THE SUBSTANTIVE PROVISIONS OF THE DRAFT ORDER: NEW BURDENS (Section 6(2)(f) of the Regulatory Reform Act 2001)**

### **Outline of the draft Order**

318. The draft Order would impose burdens on the “responsible person”, other persons who have control of the premises, employees and public authorities. The responsible person is defined in article 3. Where the premises are a workplace, the employer would be the responsible person if the workplace is, to any extent, under his control. In non-workplaces, the person who has control of the premises in connection with the carrying on by him of a trade, business or other undertaking (for profit or not) would be the responsible person. Where there is no such person, the owner would be the responsible person.
319. Article 5(1) would impose a burden on employers by placing a duty on them to ensure that the requirements of the Order and any regulations made under it are complied with in respect of the premises. This

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<sup>66</sup> These are premises which consists to a significant degree in the sale of alcohol and offers, expressly or by implication, whether on payment of a fee or not, the provision of companions for customers on the premises and / or the provision of live entertainment on the premises.

responsibility reflects the employer's responsibility under European Community law to ensure the safety of his employees. Article 5(2) would impose a similar, albeit slightly less onerous, duty, and hence burden, on the responsible person in relation to non-workplaces. In such cases, the responsible person would be under a duty to ensure that the requirements of the Order and any regulations made under it are complied with in respect of the premises, so far as they concern matters within his control.

320. Article 5(3) would impose a burden by imposing a similar duty on any person other than the responsible person who has to any extent control of the premises (the duty extending only so far as the extent of control). This would, for example, apply to a contractor who was responsible for maintaining a fire alarm system.

321. Articles 8 to 22 set out the principal duties aimed at ensuring that non-domestic premises are safe and the general fire precautions to be taken in relation to those premises. They would impose burdens on the responsible person by imposing various restrictions and requirements but the duties are limited to the taking or observance of general fire precautions (see articles 4 and 5(5)). Article 8(a) would impose a duty on employers which is very similar to that imposed by section 2 of the Health and Safety at Work etc Act 1974. Articles 9 to 11, 13, 14 and 16 to 22 derive from the Framework and Workplace Directives<sup>67</sup>. Articles 12 and 15 derive from the Chemical Agent and Explosive Atmospheres Directives<sup>68</sup>. The provisions of article 9 to 22 would enact in a substantively unmodified form existing obligations on employers contained in the Fire Precautions (Workplace) Regulations 1997<sup>69</sup>, the Management of Health and Safety at Work Regulations 1999<sup>70</sup> and the Dangerous Substances and Explosive Atmospheres Regulations 2003<sup>71</sup>. The draft Order would extend these provisions in respect of non-employees as well as to non-employers in respect of non-domestic premises. Failure to comply with articles 8 to 22 would be an offence<sup>72</sup>. Although the requirements would re-enact existing obligations, we have treated them as new burdens for the purposes of the Regulatory Reform Act 2001 (and the relevant tests in that Act) as the existing requirements are contained in secondary rather than primary legislation.

322. Article 23 would impose a burden on employees by imposing certain duties on them – to take reasonable care for their own safety and the safety of other persons, to co-operate with the employer and to inform him of any danger. Failure to comply with this requirement would be an

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<sup>67</sup> 89/391/EEC and 89/654/EEC.

<sup>68</sup> 98/24/EC and 99/92/EC.

<sup>69</sup> S.I. 1997/1840 as amended by S.I. 1999/1877.

<sup>70</sup> S.I. 1999/3242.

<sup>71</sup> S.I. 2002/2776.

<sup>72</sup> See article 32(1)(a) and (3). The maximum penalty for these offences is a fine not exceeding the statutory maximum in a magistrates' court (currently £5000) or where the case is heard on indictment in the Crown Court, an unlimited fine and / or 2 years imprisonment.

offence<sup>73</sup>. This provision is very similar to section 7 of the Health and Safety at Work etc Act 1974.

323. Article 26 would impose a burden on an enforcing authority by requiring it to enforce the Order and by requiring it to have regard to any guidance issued by the Secretary of State in performing it.

324. Article 27 concerns the powers of inspectors appointed to enforce the Order.

325. Article 27(1)(c) would impose a burden on the responsible person by authorising the inspector to require the production of relevant documents. Sub-paragraph (d) would also impose a burden on the responsible person and any other person with responsibilities in respect of the premises by authorising the inspector to require that person to give him such facilities and assistance as are necessary. Failure to comply with either requirement would be an offence<sup>74</sup>.

326. Article 29 makes provision for “alteration notices”. This would impose a burden on the responsible person by authorising an inspector, in certain circumstances, to serve a notice requiring the responsible person to take certain action before making any changes to the premises or use carried on there, which will or may result in a significant increase in the risk. Failure to comply with the requirements of an alterations notice would be an offence<sup>75</sup>.

327. Article 30 would impose a burden on the responsible person by authorising an inspector to serve an enforcement notice in certain circumstances requiring the responsible person to take certain measures in respect of the premises to ensure that the Order and any regulations made under it are complied with. Failure to comply with the requirements of an enforcement notice would be an offence<sup>76</sup>. Article 30 would also impose a burden on inspectors by requiring them to consult with specified persons before serving a notice.

328. Article 34 would impose a burden by requiring the defendant in any proceedings for an offence consisting of a failure to comply with a duty or requirement “so far as is reasonably practicable” to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement. This provision applies in relation to articles 8(a) and 12(2) and (3) and is consistent with the equivalent provision in section 40 of the Health and Safety at Work etc Act 1974<sup>77</sup>.

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<sup>73</sup> See article 32(2)(a) and (6). The maximum penalty is the same as for failure to comply with articles 8 to 22.

<sup>74</sup> See article 32(2)(e) and (8).

<sup>75</sup> See article 32(1)(c) and (3).

<sup>76</sup> See article 32(1)(d) and (3).

<sup>77</sup> Article 8(a) is very similar to the duty imposed on employers by section 2 of the 1974 Act; article 12 derives from the Dangerous Substances and Explosive Atmospheres Regulations 2002 which were made under the 1974 Act.

329. Article 38 would impose a burden on the responsible person, where necessary to safeguard the safety of fire-fighters in the event of fire, to ensure that the premises and any facilities etc provided on the premises are maintained in an efficient state, efficient working order and in good repair. Failure to comply with this duty (which matches article 17 - aimed at the protection of “relevant persons”<sup>78</sup>) would be an offence<sup>79</sup>.
330. Article 40 would impose a burden on employers by prohibiting them from charging their employees for anything done or provided in compliance with the Order (for example by providing personal protective equipment). Failure to comply with this prohibition would be an offence<sup>80</sup>. This provision is very similar to section 9 of the Health and Safety at Work etc Act 1974.
331. Article 42 makes special provision in respect of licensed premises. It would impose burdens on the licensing authority and the enforcing authority by requiring the licensing authority to consult with the enforcing authority before issuing a licence and by requiring the enforcing authority to notify the licensing authority of any action that it takes in relation to the premises (such as service of a notice).
332. Article 46 would impose a burden on public authorities (as well as Government departments) by requiring them to consult with the enforcing authority before taking any action in relation to premises which will or may result in changes to the general fire precautions. “Public authority” is defined to include approved inspectors under the Building Act 1984.

**PROPOSALS WHICH MIGHT PREVENT ANY PERSON FROM CONTINUING TO EXERCISE ANY RIGHT OR FREEDOM WHICH HE OR SHE MIGHT REASONABLY BE EXPECTED TO CONTINUE TO EXERCISE (Section 6(2)(e) of the Regulatory Reform Act 2001)**

333. None of the proposals in the substantive provisions of the draft Order would prevent any person from continuing to exercise any right or freedom which he or she might reasonably be expected to continue to exercise. The draft Order would certainly impose requirements and prohibitions on persons in connection with premises but these are necessary (and proportionate) to ensure the protection of persons who use the premises or who may be affected by a fire on the premises.

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<sup>78</sup> See definition in article 2.

<sup>79</sup> See article 32(1)(a) and (3).

<sup>80</sup> See article 32(2)(g) and (7).

## **PROPOSALS WHICH HAVE THE EFFECT OF CREATING A BURDEN AFFECTING ANY PERSON IN THE CARRYING ON OF AN ACTIVITY AND HOW THE CONDITIONS IN SECTIONS 1(1)(c) AND (3)(2) REGULATORY REFORM ACT 2001 WILL BE MET IN RELATION TO BURDENS IMPOSED BY THE DRAFT ORDER**

### **Proportionality**

334. Section 1(1)(c) of the 2001 Act provides that a regulatory reform order can make new provision having the effect of imposing a burden which affects any person in the carrying on of an activity where the new burden is proportionate to the benefit which is expected to result from its creation.

335. It is self-evident that the substantive provisions of the draft Order would create burdens affecting persons in the carrying on of their activities. The requirements and prohibitions contained, in particular, in Part 2 and articles 29, 30, 31, 37 and 38 (most of which are subject to criminal sanctions) apply to the “responsible person”. This is defined in article 3 to include the employer, in relation to a workplace, the person who has control of the premises in connection with the carrying on by him of trade, business or other undertaking (for profit or not) or, in any other case, the owner. The draft Order would also impose 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 (see article 5(3)). This would include any person who has a contractual obligation in relation to the maintenance or safety of premises (for example a company responsible for maintaining a fire alarm on premises).

336. Article 5 provides that where the premises are a workplace, the responsible person (i.e. the employer) must ensure that any duty imposed by articles 8 to 22 or by regulations made under article 24 is complied with in respect of the premises. Where the premises are not a workplace, the responsible person must ensure that those duties are complied with in respect of those premises, so far as the requirements relate to matters within his control. The extent of the duty imposed on persons other than the responsible person is also limited by the extent of that person’s control of premises. In relation to non-employers, article 5 ensures that obligations are only imposed to the extent of the person’s control of those premises. The duties imposed on employers are stricter – they are required to ensure that the fire safety duties are complied with in the workplace, whether or not the requirements relate to matters within their control. This reflects the high standard which is expected of employers – both in domestic and European legislation on worker health and safety. Article 22 ensures that other persons who may have obligations in respect of the premises co-operate and co-ordinate their activities. In the context of the duties imposed by articles 8 to 22 and 24 (described further below), it is considered that that the burden imposed by article 5 (to the extent that it can be said to independently impose a burden) is proportionate to the benefit.

337. The general duty imposed by article 8 is qualified in two ways - (a) (which applies to employers in relation to their employees) is subject to the qualification that the responsible person must take measures “so far as is reasonably practicable”. This formulation of the duty is very similar to section 2 of the Health and Safety at Work etc Act 1974. In relation to section 2, the words “so far as is reasonably practicable” were considered by the Court of Appeal in Edwards v NCB [1949] 1 All ER 743. The Court held that it is a narrower term than “physically possible” and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk is placed in the other; and that if it be shown that there is a gross disproportion between them, the risk being insignificant in relation to the sacrifice, the person on whom the burden is placed discharges the burden of proving that compliance was not reasonably practicable. This interpretation has been consistently applied by the courts in subsequent decisions. As with section 40 of the 1974 Act, article 34 provides that in any proceedings for an offence under the Order consisting of a failure to comply with a duty or requirement so far as is reasonably practicable, it is for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement. The reverse legal burden of proof provided by section 40 of the 1974 Act was considered by the Court of Appeal in R v Davies [2002] All ER (D) (Dec) and found to be compatible with the European Convention on Human Rights since it was justified, necessary and proportionate. It is reasonable to assume that the courts would take a similar line in relation to article 34.

338. Article 8(b) provides that in relation to relevant persons who are not his employees, the responsible person must take such general fire precautions “as may reasonably be required in the circumstances of the case”. This is a somewhat less onerous duty than is imposed on employers in relation to employees but reflects the nature of the duty imposed on the holders of fire certificates under the Fire Precautions Act 1971 and those who are exempt from holding such certificates (see sections 5(3) and 9A(1)). The inclusion of a test of reasonableness in 8(b) and the defence of due diligence provided by article 33 means that the obligation is proportionate to the benefit<sup>81</sup>.

339. The burdens imposed by articles 9 to 22 are, in general terms, to take appropriate actions to ensure the safety of relevant persons. Proportionality is ensured by article 5(5), the general due diligence defence provided by article 33 and the wording of individual articles. For example, article 11 requires the responsible person to make and give effect to “such arrangements as are appropriate, having regard to the size of his undertaking and the nature of its activities, for the effective planning .. of the preventative and protective measures while article 13 imposes a duty to ensure that the premises are equipped with appropriate fire-fighting

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<sup>81</sup> The due diligence defence re-enacts section 25 of the Fire Precautions Act 1971 - there are similar defences in regulations 11 and 15 of the Fire Precautions (Workplace) Regulations 1997.

equipment etc. “where necessary (whether due to the features of the premises, the activity carried on there, any hazard present or other relevant circumstances) in order to safeguard the safety of relevant persons”. Other articles are couched in similar terms. The overall effect of the provisions is to ensure that the responsible person is only required to take measures which are necessary to ensure the safety of relevant persons and hence ensures that burdens are proportionate to the benefits.

340. To the extent that article 12 imposes requirements “so far as is reasonably practicable”, the due diligence defence in article 33 would not apply. However it is considered that the requirements (which re-enact existing measures contained in the Dangerous Substances and Explosive Atmospheres Regulations 2002) are still proportionate to the benefit. The justification set out in relation to article 8(a) applies in relation to article 12 in a similar way.
341. The burden which would be imposed by article 23 for employees to take reasonable care for their own safety and the safety of other persons, to co-operate with their employer and to inform their employer of any danger is very similar to the existing duty contained in section 7 of the Health and Safety at Work etc Act 1974. The purpose of article 23 is to ensure that the existing duty continues to apply to employees in relation to fire safety and that it can be enforced by the relevant enforcing authority under the draft Order. It is necessary to impose obligations on employees to protect themselves as well as fellow-workers. The duties to take reasonable care, to co-operate and to inform the employer of dangerous situations are proportionate to the desired outcome. Again, the duty in article 23 is subject to the due diligence defence in article 33.
342. Article 24 would empower the Secretary of State to make regulations about fire precautions. It would re-enact section 12 of the Fire Precautions Act 1971. Article 24(4) would require the Secretary of State to consult with such persons or bodies of persons as appear to be appropriate before making any regulations. If regulations were made, any offence created would be subject to the due diligence defence in article 33. The power to make regulations would be limited to making regulation about precautions to be taken or observed in relation to the risk to relevant persons as regards premises in relation to which the Order applied. It would be constrained by general principles of administrative law as well as the Human Rights Act 1988 and the necessity of compliance with the European Convention on Human Rights. The limits on the scope of the power, as well as the safeguards on its exercise, ensure that the measures are proportionate to the result.
343. Article 26 would impose a burden on the enforcing authority by requiring it to enforce the Order and in doing so to have regard to such guidance as may be issued by the Secretary of State. It is self-evident that the draft Order could only be effective if properly enforced. The purpose of article 26(2) is to provide a mechanism for ensuring that enforcing authorities take a consistent approach to enforcement across England

and Wales<sup>82</sup>, although subject to this, it would be a matter for the discretion of individual authorities how enforcement is carried out. The burden imposed on enforcing authorities would be proportionate to the benefit to the public of an effective Order which ensures safety.

344. The powers of inspectors set out in article 27 are those necessary to ensure that the draft Order could be effectively enforced. They would re-enact section 19 of the Fire Precautions Act 1971 with some modifications designed to match equivalent powers of health and safety inspectors under the Health and Safety at Work etc Act 1974. The burdens imposed by article 27 on the responsible person and other persons with responsibilities in respect of the premises would be proportionate to the overall benefit of effective enforcement and hence protection of the public. The powers of inspectors are qualified in a number of ways – in particular that they can only be exercised where necessary for the purpose of carrying the Order and any regulations made under it into effect and can only be exercised at a reasonable time. Paragraphs (2), (3) and (4) impose additional procedural safeguards. Nothing in article 27 provides for a power of forcible entry, search or seizure.

345. The burden imposed on the responsible person by article 29 by service of an alterations notice would be modest when compared with the benefit. It effectively re-enacts and extends section 8 of the Fire Precautions Act 1971. Article 29 would require the responsible person to notify the enforcing authority of any changes in relation to the premises which may result in a significant increase in risk to persons in the event of fire. An alterations notice could also contain a requirement to record the results of a risk assessment made under article 9 and send a copy of it with a summary of changes which will be made to the general fire precautions. Again these burdens are modest. An alterations notice could only be served in relation to high risk premises (or premises which would be high risk if any change is made to them). It alerts the enforcing authority to any potential problems and allows an intervention before changes are made which significantly increase the risk. Article 35 provides for an appeal to a magistrates' court against the service of an alterations notice. On an appeal, the court may either cancel or affirm the notice (and in affirming it may do so either in its original form or with modifications). There is a further appeal from the magistrates to the Crown Court. In the circumstances, the burden imposed by article 29 is proportionate to the benefit.

346. The provisions on enforcement notices contained in article 30 are similar to equivalent provisions in section 20 of the Health and Safety at Work etc. Act 1974 and the Fire Precautions (Workplace) Regulations 1997. An enforcement notice could only be served in circumstances where the responsible person had failed to comply with a provision of the draft Order. The measures which could be required to be taken by a notice would be limited to those which are necessary to ensure the failure

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<sup>82</sup> Article 26(2) re-enacts section 18(3) of the Fire Precautions Act 1971.

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). As with article 29, there would be an appeal against the service of an enforcement notice to a magistrates' court. Bringing of an appeal would have the effect of suspending the notice unless the court ordered otherwise.

347. Article 32 would impose burdens on the responsible person and other persons by providing criminal sanctions for failure to comply with the requirements and prohibitions imposed by the draft Order and any regulations made under it. The most serious offences are subject to a maximum penalty of a fine not exceeding the statutory maximum in a magistrates' court (currently £5000) or on conviction on indictment to an unlimited fine and/or a term not exceeding 2 years. Other, less serious offences are subject to lesser maximum penalties. The level of penalties is consistent with existing penalties under the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997 and is proportionate to the benefit of ensuring that the draft Order is complied with.
348. In addition to penalties for failure to comply with the fire safety duties imposed by or under the draft Order, article 32 would make it an offence for any person to make a false entry in any register, book, notice etc required to be kept under the draft Order, to intentionally obstruct an inspector in the exercise or performance of his or her duties or pretend to be an inspector. Again, it is considered that these offences, and the penalties attached to them, are proportionate to the benefit of ensuring that the draft Order is effectively enforced.
349. Article 32(9) and (10) would extend liability under article 32 to directors and managers etc. of corporate bodies in certain circumstances and re-enacts section 23 of the Fire Precautions Act 1971. To the extent that the draft Order would apply more widely than the 1971 Act, this might be seen as a new burden although section 23 of the 1971 Act was applied to the Fire Precautions (Workplace) Regulations 1999 by virtue of regulation 17(2) so is already applicable to employers. In any event, the burden imposed is proportionate to the benefit in ensuring that those who are culpable for the failings of a corporate body are brought to account. The same can be said of article 32(11) which would extend liability to any person who, by their act or default, caused another person to commit an offence under the Order (see 24 of the 1971 Act).

350. Article 38 is very similar to article 17 – the only difference being that article 38 is concerned with measures which need to be maintained for the protection of or use by fire-fighters (as opposed to article 17 which is concerned with safeguarding the safety of relevant persons). Article 38 is directly relevant to article 37 (fire-fighters' switches for luminous tube signs) but is also relevant to other enactments which require measures to be provided for the benefit of fire-fighters – including requirements which may be imposed by building regulations. Given that these measures will have been provided in the first place to ensure the safety of fire-fighters, the requirement to maintain the premises and measures provided is proportionate to the benefit of ensuring the safety of fire-fighters in the event of a fire. The duty imposed by article 38 is limited to measures which are necessary in order to safeguard the safety of fire-fighters.
351. The burdens imposed on licensing authorities, enforcing authorities and other authorities (including approved inspectors under the Building Act 1984) by articles 42 and 46 are modest when compared with the benefits that will result i.e. to ensure that action taken by the authorities is appropriate and takes into account any concerns which the other authority concerned may have before action is taken in respect of the premises or a licence is issued or varied.
352. Article 49 would apply the provisions of the draft Order (except for articles 29, 30 and 32 to 36) to the Crown. Article 49(3) would apply the draft Order to both Houses of Parliament. At present, the Fire Precautions Act 1971 applies to the Crown in a similar way as article 49 would provide and the Fire Precautions (Workplace) Regulations 1997 apply to the Crown and Parliament, article 49 being consistent with regulation 18 of those Regulations. To the extent that the draft Order would affect the prerogative, hereditary revenues, personal property or interests of the Crown or the interests of the Duchies of Lancaster or of Cornwall, Queen's and Prince of Wales' consent has been sought to the inclusion of article 49 in the draft Order. The House authorities have been consulted on the proposals and are content with the inclusion of article 49 in the draft Order.

### **Fair balance and overall desirability**

353. The draft Order would strike a fair balance between the public interest and the interests of the persons affected by the burden being created. Although the draft Order would impose a number of duties on employers and others in respect of premises, the result would be a high level of protection from risks to safety in the event of fire for employees, all persons lawfully on the premises (including the responsible person) and any person in the immediate vicinity of the premises who might be affected by a fire on the premises. The burdens imposed on employers and others are balanced by the nature of the duties themselves (i.e. goal-setting rather than prescriptive), the restrictions on the criminal sanctions

available<sup>83</sup> and the defences available (and rights of appeal). Potentially, the draft Order would impose obligations on a wide range of persons, but it is entirely appropriate to impose obligations to protect persons in circumstances where risks arise from matters within their control. More onerous duties are imposed on employers but this is consistent with European Community law and domestic health and safety legislation, and consistent with the principle that the improvement of workers' safety at work is an objective which should not be subordinated to purely economic considerations.

354. The measures in the draft Order are those which are necessary to achieve the required level of protection but in most cases they are goal-setting requirements rather than prescriptive - leaving a degree of discretion for the responsible person to determine how the obligations will be met. At the heart of the new system is the requirement to carry out a risk assessment. This places the primary responsibility for determining what the risks are and how they will be minimised on the responsible person - unlike fire certification under the Fire Precautions Act 1971 which required the fire authority to inspect every premises and determine for themselves what were the appropriate measures. A principal benefit of this is that the obligation is on-going and means that fire precautions must be dynamic and match the actual risks - rather than being determined at a particular point in time and encapsulated in the terms of a fire certificate. This would also free enforcing authorities to be able concentrate their time on enforcing in high risk premises.

355. It is also relevant to consideration of the "fair balance" test that many of the burdens which would be created by the draft Order are not, in fact, new. For example, article 8 would impose duties which are very similar to the existing duties in section 2 of the Health and Safety at Work etc Act 1974 and the Fire Precautions Act 1971, the provisions of article 9 to 22 would enact in a substantively unmodified form existing obligations on employers contained in the Fire Precautions (Workplace) Regulations 1997, the Management of Health and Safety at Work Regulations 1999 and the Dangerous Substances and Explosive Atmospheres Regulations 2003 while article 23 is very similar to section 7 of the 1974 Act. Article 30 (enforcement notices) derives from a similar provision in the Fire Precautions (Workplace) Regulations 1997 and article 29 effectively re-enacts and extends section 8 of the Fire Precautions Act 1971. Although the draft Order would extend these provisions in respect of non-employees as well as to non-employers in respect of all non-domestic premises, sections 3 and 4 of the Health and Safety at Work etc Act 1974 already impose general duties on employers and others in respect of non-domestic premises.

356. The draft Order is regulatory and its purpose would be to protect the safety of persons from fire in non-domestic premises. The persons on

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<sup>83</sup> See, for example, article 32(1)(a) which makes a failure to comply with a duty imposed by articles 8 to 21 and 38 a criminal offence only where that failure places one or more relevant persons at risk of death or serious injury in case of fire.

whom duties would be imposed are generally the persons who have chosen to engage in work or some other undertaking (usually for gain) and who are in charge of it. As Lord Justice Tuckey said in R v Evans [2002] All ER (D), they are not therefore unengaged or disinterested members of the public on whom burdens are being imposed. The draft Order would impose a continuing duty to ensure a state of affairs, a safety standard. Where this standard is not met, it is justifiable and fair to require the person who has created or is in control of the risk to take steps to ensure that the standard is met to ensure the safety of persons.

357. An example of fair balance is the requirement in article 9 to carry out a risk assessment. As noted above, this is at the heart of the new system. It would impose a burden on the responsible person by requiring that person to make a suitable and sufficient risk assessment, to review and keep it up to date and to record the significant findings of the assessment in certain circumstances. The burden would not be particularly onerous (and the nature of the assessment will vary according to the type of premises, the persons who use those premises and the risks) but the benefits to employees and other persons lawfully on the premises are great since the risk assessment is the basis for taking general fire precautions on the premises and should result in a high level of protection for such persons from risks to their safety in the event of fire.

358. The draft Order would remove or reduce numerous burdens, in particular it would repeal the Fire Precautions Act 1971, repeal or amend numerous local act provisions concerning fire safety, dis-apply the Health and Safety at Work etc Act 1974 in respect of general fire precautions and dis-apply conditions or licences and byelaws which concern fire safety. In addition, it would consolidate a number of important regulations on fire safety - in particular the Fire Precautions (Workplace) Regulations 1997 and aspects of the Management of Health and Safety at Work Regulations 1999 and the Dangerous Substances and Explosive Atmospheres Regulations 2002. This would mean that for the first time, the legislation on general fire safety would, in the main, be in one place enforced by one authority. This should have a number of beneficial effects, including transparency and a greater awareness and understanding of, and compliance with, the applicable law. It would also reduce the overall regulatory burden on persons while maintaining a high level of protection for persons.

359. 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.

### **PROVISIONS DESIGNATED AS SUBORDINATE PROVISIONS (Section 6(2)(g) of the Regulatory Reform Act 2001)**

360. The following articles of the draft Order are designated as subordinate provisions, subject to a negative resolution procedure –

- 2 (the definition of “relevant local authority” in article 2 interpretation);
- 9-22 (fire safety duties);
- 25 (enforcing authorities);
- 45 (duty to consult enforcing authority before passing plans);
- Schedule 1 (supplemental provision to articles 9, 12 and 16).

361. The definition of “relevant local authority” in article 2 is designated to allow flexibility in defining who is the authority for the purposes of article 25 (see further below) and article 30(5) (which determines who should be consulted before an enforcement notice is served in relation to premises). Responsibility for functions can and does change at the local level - most commonly as a result of local government re-organisation. Designation of this definition in article 2 would allow the draft Order to be amended to keep track of changes and to ensure that the relevant local authority is in fact the most appropriate authority. The definition is only relevant to articles 25 and 30, which deal with matters which are essentially administrative.

362. Articles 9 to 22 particularise the general fire precautions which the responsible person is required to take in respect of relevant persons (as defined in article 2). They implement provisions on general fire safety contained in a number of European Community directives on worker health and safety. Those directives impose obligations on employers in respect of their employees. To the extent that articles 9 to 22 impose wider duties (i.e. in relation to non-employees and on responsible persons who are not employers) they go further than the requirements of the directives but this is considered desirable to ensure that a single regime for fire safety applies in relation to all non-domestic premises to which the draft Order applies.

363. The purpose of designating these articles as subordinate provisions is to enable them to be modified as a result of changes to the directives which they seek to implement. Although such changes could be achieved using powers under the European Communities Act 1972, this could only be done to implement the changes made to the directives. The powers under the 1972 Act could not be used to amend the draft Order in relation to persons outside the scope of the directives i.e. non-employers and non-employees. Designation of these articles appears to be the best way to ensure that the draft Order can be amended quickly so that it continues to apply to all responsible persons in the same way<sup>84</sup>. It should also be noted that articles 9 to 22 impose requirements that are currently imposed through secondary legislation<sup>85</sup> and which can be amended by the

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<sup>84</sup> Subject to certain exceptions where the duty is only applicable in the context of an employer-employee relationship.

<sup>85</sup> The Fire Precautions (Workplace) Regulations 1997, the Management of Health and Safety at Work Regulations 1999 and the Dangerous Substances and Explosive Atmospheres Regulations 2002; the relevant parts of these instruments would be revoked by the draft Order.

Secretary of State as necessary.

364. Although articles 9 to 22 impose substantive requirements, in many ways these particularise the general duty provided for in article 8. Even without articles 9 to 22, the responsible person would be required to take general fire precautions - which might, in practice, equate with the requirements particularised in articles 9 to 22.
365. Those articles only impose requirements to take general fire precautions (as defined in article 4) in relation to relevant persons. As articles 4 and 5(5) would not be designated, this would effectively limit the extent to which the requirements could be modified. It should also be noted that since articles 9 to 22 implement European Community obligations, this also provides an external control on the extent to which a subordinate provisions order could modify the articles. So, although these are substantive requirements, the circumstances appear to justify their designation as subordinate provisions.
366. Article 25 sets out who would be the enforcing authority in relation to specified premises. These include fire authorities, the Health and Safety Executive, the Ministry of Defence Fire Service, local authorities and fire inspectors. Article 25 is designated as a subordinate provision to give the Secretary of State flexibility in determining who should enforce the draft Order. This is particularly desirable in relation to the Health and Safety Executive who are made enforcing authority for certain premises where they are the enforcing authority under the Health and Safety at Work etc Act 1974. Responsibility for enforcement under that Act can be re-allocated and it may be that in the future the HSE would cease to be responsible for premises for which they are the enforcing authority under the draft Order. Designation of article 25 would allow the draft Order to be amended to keep track of any such changes. But it would also allow the demarcation between authorities to be altered where that is appropriate in a particular case. The identity of the enforcing authority is largely an administrative matter.
367. Article 45 provides for consultation between local authorities and enforcing authorities for the draft Order in respect of plans deposited with local authorities in accordance with building regulations. While the provision is necessary at present, and re-enacts section 16 of the Fire Precautions Act 1971, requirements as to consultation in respect of plans can be dealt with through building regulations. By designating this provision, which is an administrative measure, it would allow article 45 to be amended in the light of any review of the requirements of building regulations which concern consultation. This is desirable to ensure that the two regimes do not apply conflicting requirements. Any change to article 45 would only be made in consequence of changes to building regulations which themselves must be consulted on before being made<sup>86</sup>.

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<sup>86</sup> See section 14 of the Building Act 1984.

368. The draft Order provides that the negative resolution procedure applies to a subordinate provisions order. This is considered to provide an appropriate level of Parliamentary scrutiny, given the nature of the provisions which are designated. In particular, it should be noted that the secondary legislation from which articles 9 to 22 and Schedule 1 are derived are subject to the negative resolution procedure - as are building regulations which would make provision for consultation (and render article 45 unnecessary). The remaining provisions are essentially administrative.

**ESTIMATED SAVINGS OR INCREASES IN COST AS A RESULT OF PROPOSALS, THE REASONS FOR THE SAVINGS OR INCREASES, THE AMOUNT AND HOW CALCULATED (Section 6(2)(h) of the Regulatory Reform Act 2001)**

369. Using the broad range of 2 million premises to which the draft Order would apply, the Government estimates that the new burden costs to business (in England and Wales) for obtaining the guidance and becoming familiar with it would be in the range of £66m to £88.8m. This is set against estimated savings across all sectors of between £52m to £155m a year plus some wider but un-quantifiable economic benefits. The removal of the requirement for businesses to apply for fire certificates would result in a saving to business of approximately £1.65m per annum. Full details and means of calculation are provided in the regulatory impact assessment.

**OTHER BENEFITS WHICH ARE EXPECTED TO FLOW FROM THE PROPOSALS (Section 6(2)(i) of the Regulatory Reform Act 2001)**

370. It is not possible to quantify the benefit which would accrue from the removal of confusion and overlap of current fire safety regimes. Benefit would however arise as businesses would not be faced with a morass of legislative requirements and would not be faced with differing requirements being set by different enforcing authorities. Improvements to consultation arrangements between public bodies who have a statutory interest in any particular premises would also benefit business by reducing the possibility of action being taken by any one public body that would conflict with the legislative requirements of another body – for example an authority enforcing the draft Order should consult with the local authority conservation officer before taking action that would mean the officer's consent would be needed.

**COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

371. A statement of compatibility with the European Convention on Human Rights has been signed by Phil Hope M.P., Parliamentary Under Secretary

of State at the ODPM.

372. Article 6 (right to a fair trial), article 8 (right to respect for private life) and article 1 of the first protocol (protection of property) of the Convention are all relevant to the draft Order. To the extent that the requirements and obligations under the draft Order could be said to be an interference with a person's right to privacy, they are nevertheless compatible with article 8 as they are necessary in the interests of public safety and for the protection of the rights of others (i.e. persons lawfully on premises to which the draft Order applies or who may be affected by a fire on the premises). The arguments on proportionality are set out above and are also relevant to the question of compatibility with the Convention.
373. Article 27 of the draft Order concerns the powers of inspectors. This article engages Convention rights in two ways. The power to require the production of records could be seen as an infringement of the right implied into article 6 of the freedom from self-incrimination (since evidence collected under this power might be used to secure a criminal conviction). As a right implied into Article 6, the privilege against self-incrimination is not subject to any express restrictions in the Convention, but it is generally acknowledged that it is not an absolute right (see for example the judgement of the Privy Council in Procurator Fiscal, Dunfermline and another v Brown (2003) 1 AC 681). It is subject to such limitations as serve a legitimate interest and are proportionate to that interest. There is an important public interest in inspectors being able to effectively investigate whether the draft Order has been complied with and the measures are proportionate.
374. The second Convention right engaged by article 27 is article 1 of the first protocol. Inspectors would be empowered to take samples of any articles or substances found in premises for the purpose of ascertaining their fire resistance or flammability and to dismantle or test any article or substance which appears to have caused or is likely to cause danger to any person. Although this might amount to interference with the peaceful enjoyment of a person's possessions, article 1 expressly permits such interference which are necessary in accordance with the general interest. These powers would be necessary to ensure effective enforcement of the draft Order and are proportionate to those aims. In the circumstances, article 27 is considered to be compatible with the Convention.
375. The reverse onus clause in article 34 might be seen as an infringement of article 6(2) of the Convention which provides for a presumption of innocence. However, as explained above, a similar provision in the Health and Safety at Work etc Act 1974 was considered by the Court of Appeal in R v Davies [2002] All ER (D) (Dec) and found to be compatible with the European Convention on Human Rights since it was justified, necessary and proportionate. It is reasonable to assume that the courts would take a similar line in relation to article 34.

## **CHARGES IMPOSED ON PUBLIC REVENUES etc.**

376. 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.
377. There are a number of provisions the effect of which may be to impose a charge on public revenues. Article 24 would give the Secretary of State power to make regulations about fire precautions. This would involve the Secretary of State in the administrative expense of consulting on and making regulations. Article 24 re-enacts section 12 of the Fire Precautions Act 1971 so the draft Order would not increase the costs. Article 25(c) would make the fire service maintained by the Secretary of State for Defence the enforcing authority for the draft Order in respect of premises occupied by the armed forces of the Crown. This would result in the Secretary of State incurring the costs of enforcing the draft Order in respect of such premises. It should be noted that this re-enacts the effect of the Fire Precautions (Workplace) Regulations 1997 so it is unlikely that the draft Order would add to the existing costs of enforcement.
378. Article 36 provides for the determination of technical disputes by the Secretary of State, which would cause the Secretary of State to incur administrative costs. Although it is not possible to predict the extent to which this provision would be used in practice, it is likely that any costs incurred by the Secretary of State would be relatively modest.
379. Article 46 imposes an obligation on government departments, and other public authorities, to consult the enforcing authority before taking any action in respect of premises which might affect the fire precautions provided in the premises. The administrative costs which this would entail are likely to be modest.
380. Finally, article 49 would apply the draft Order in a modified form to the Crown and the Houses of Parliament. This would result in expenditure to comply with the obligations contained in the draft Order but would be unlikely to lead to any increase in existing expenditure as the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997 already apply to the Crown and Houses in a similar way.

## **RETROSPECTION**

381. The draft Order would not have retrospective effect. To the extent that the draft Order would restrict the ability of licensing authorities to set terms of conditions relating to general fire safety, the amendments contained in Schedule 2 would not affect existing licensing conditions, until such time as they were varied or renewed. However, article 43 would suspend the operation of such conditions as long as the draft Order continued to apply to the premises in question. This re-enacts the effect of section 31 of the Fire Precautions Act 1971. Article 44 would have a similar effect in relation to pre-existing byelaws.

## **COMPATIBILITY WITH EUROPEAN UNION OBLIGATIONS**

382. The draft Order would give effect, in England and Wales, to:

- Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (O.J. No. L 183, 29.6.89, p.1) (“the Framework Directive”)<sup>87</sup>,
- Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (O.J. No. L 206, 29.7.91, p. 19) (“the Temporary Workers’ Directive”) (except for provisions on the responsibility of host undertakings to temporary workers (article 8));
- Article 6 of, together with paragraphs 4 and 5 of the annexes to, Council Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace (O.J. No. L 393, 30.12.89, p.1) (“the Workplace Directive”),
- Articles 6 and 7 of Council Directive 94/33/EC on the protection of young people at work;
- Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work (O.J. No. L 131, 05.05.98, p. 57) (“the Chemical Agents Directive”) and
- Council Directive 99/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (O.J. No. L 23, 28.01.00, p. 57) (“the Explosive Atmospheres Directive”),

in so far as those provisions relate to general fire precautions to be taken by employers and in so far as more specific legislation does not make appropriate provision.

383. The proposals are therefore compatible with the UK’s European Union obligations.

## **GUIDANCE TO BE ISSUED IN SUPPORT OF THE DRAFT ORDER**

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<sup>87</sup> but would not give effect to the provisions in the Framework Directive on accident reporting (article 9(1)(c) and (d) and (2)), employment protection rights (articles 7(2), 8(4) and (5) and 11(4)), risk groups (article 15) and use of personal protective equipment (article 13(2)(b)).

384. If the draft Order is approved by Parliament, the ODPM intends to issue guidance for the public on the requirements of the Order. Eleven guides are proposed - each one directed at specific types or uses of premises.
385. The first guide (aimed at offices and shops) is under development and will form a template for the remainder of the series.
386. In developing the template and subsequent guides there is a need to balance the needs of business, enforcing authorities and the Government. The ODPM is committed to working with all stakeholders to ensure that the guidance issued is appropriate and meets, so far as is reasonable and practical the needs of all interested parties.

## **THE FIRE AND RESCUE SERVICES BILL**

387. In addition to the proposals for reform of fire safety legislation contained in the draft Order, the Fire and Rescue Services Bill<sup>88</sup> provides for the modernisation of the fire and rescue service. If enacted it would repeal and re-enact the Fire Services Act 1947, would introduce new statutory duties to make provision for non-fire emergencies (such as road traffic accidents) and to make provision for the promotion of fire safety. Although it largely concerns the organisation and functions of fire and rescue authorities, it includes a power of inspection for the purposes of determining the cause of a fire or the reason for its spread, as it was considered that the Regulatory Reform Act 2001 did not allow such a provision to be included in the draft Order (for example as it provides for a new forcible power of entry). The Bill is intended to implement the White Paper "Our Fire and Rescue Service" published by the ODPM in June 2003.
388. Although it might have been possible to reduce the number of provisions which are contained in the draft Order by incorporating them into the Bill (by, for example, providing enabling powers to make regulations), this would still have resulted in a much larger Bill. It was concluded that this, together with the fact that the draft Order concerns fire safety while the Bill mainly concerns the organisation and functions of fire and rescue authorities, meant that it was appropriate to pursue the proposals for regulatory reform as well as the Bill. Such an approach has been supported by the Economic and Domestic secretariat of the Cabinet Office, who have advised that there is not enough room in the Parliamentary programme to pursue a Bill which would cover reform of fire safety as well as modernisation of the fire and rescue services. The ODPM therefore considers that use of both the proposed draft regulatory reform order and a Bill represents the most efficient use of Parliamentary time.

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<sup>88</sup> Currently being considered in the House of Lords.

**Office of the Deputy Prime Minister**  
**19th April 2004**