



OFFICE OF THE
DEPUTY PRIME MINISTER

A consultation document on the reform of fire safety legislation

Amending various Acts and statutory instruments
to
Simplify, rationalise and consolidate the law with respect
to fire safety in buildings in use

A Consultation Paper issued by
The Office of the Deputy Prime Minister, July 2002

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Published by the Office of the Deputy Prime Minister. Printed in the UK, July 2002 on material containing 75% post-consumer waste and 25% ECF pulp (cover) and 100% post consumer waste (text).

Product code 02FP000403

CONTENTS

CHAPTER 1	
Summary of Proposals	5
CHAPTER 2	
Introduction	7
CHAPTER 3	
Background to the Policy and Legislation at Issue	12
CHAPTER 4	
The Proposals: Application, Scope and the Requirements	16
CHAPTER 5	
The Proposals: Enforcement	41
CHAPTER 6	
The Proposals: New Powers and Duties	54
CHAPTER 7	
Analysis	57

ANNEX A	
Legislation to be repealed or amended	69
ANNEX B	
List of consultees	82
ANNEX C	
Regulatory Reform Proposals and Orders – Parliamentary consideration	84
ANNEX D	
Consultation Criteria	88
ANNEX E	
Partial Regulatory Impact Assessment	89
ANNEX F	
Response Form	106

CHAPTER 1:

Summary of Proposals

<p>What is being consulted on?</p>	<p>The key proposals are:</p> <ul style="list-style-type: none"> • So far as possible, general fire safety legislation should be reformed to 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 fire safety resting with the person responsible for the premises • Protection should be provided to persons inside a building and those who might be affected by a fire • 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 which are for the use and protection of the fire brigade • There will 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. 	<p>Relevant paragraphs</p> <p>4.1</p> <p>4.6</p> <p>4.26</p> <p>5.58 & 5.59</p> <p>4.62</p> <p>6.1 to 6.11</p>
<p>Why are these changes needed?</p>	<p>Fire safety provision is scattered among many different pieces of legislation. It is sometimes inconsistent and can be difficult to understand.</p>	<p>3.1 to 3.16</p>
<p>Who will these proposals affect?</p>	<p>The proposed changes will affect: employers and virtually all those who are responsible for buildings to which the public may have access.</p>	<p>4.11 to 4.20</p>
<p>What will be the financial impact of the changes?</p>	<p>We consider that the financial benefits to business will be around £1.7m from the ending of the requirement for fire certificates and £45 to 110m from possible savings from a reduction in the number of fires. The implementation and policy costs will total around £65m. See the partial regulatory impact assessment at Annex E.</p>	<p>7.12</p>

<p>How will these proposals be taken forward, and when will they be implemented?</p>	<p>We intend that the proposed changes to legislation are made through a Regulatory Reform Order under the Regulatory Reform Act 2001. Subject to the outcome of consultation and the Parliamentary scrutiny of our proposals, we propose that the changes are implemented from Spring 2004.</p> <p>We need to be sure that an Order does not remove any necessary protection from individuals or organisations, and that it does not prevent them from exercising existing rights or freedoms that they might reasonably expect to continue to exercise. Where an Order imposes a burden, it must be desirable. It must also strike a fair balance between the public interest and the interest of those who are affected by the burden being created, and the burden must be proportionate to the expected benefit.</p>	<p>2.7</p> <p>2.9 to 2.12</p>
<p>Consultation</p>	<p>This consultation is being made in accordance with the requirements of the Regulatory Reform Act 2001 and the terms of the Government's Code of Practice on Written Consultations.</p> <p>All responses should be received by 22 November 2002.</p>	<p>Annex D</p>

CHAPTER 2:

Introduction

- 2.1 This consultation paper sets out in detail the Government's proposals for reforming general fire safety legislation in England and Wales. Responsibility for fire safety is devolved in Scotland and Northern Ireland. In Wales the applicability of the proposed Order will also be subject to the agreement of the National Assembly for Wales under section 1(5) of the Regulatory Reform Act 2001.
- 2.2 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.
- 2.3 The aim of the reform is to simplify, rationalise and consolidate existing legislation. It would provide for a risk based approach to general fire safety allowing more efficient, effective enforcement by the fire service and other enforcing authorities.
- 2.4 The key proposals are:
- 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 which are for the use and protection of the fire brigade
 - There will 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.
- 2.5 Our 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, as amended, and the Management of Health and Safety at Work Regulations 1999, or will exist under the forthcoming Dangerous Substances and Explosive Atmospheres Regulations. Some self-employed people and elements of the voluntary sector will be brought within the regime but many of 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.

- 2.6 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. We also propose to remove the burden of the need to apply for fire certificates.
- 2.7 We propose to introduce the reform by means of a Regulatory Reform Order under the Regulatory Reform Act 2001. This consultation is being conducted in accordance with the provisions of section 5 of the Act. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out in Annex F.

Regulatory Reform Order-making

- 2.8 Each proposal for a Regulatory Reform Order must satisfy a number of legal tests. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Committees that, among other things, the proposals satisfy these tests. In particular, the Regulatory Reform Act requires information on:
- whether any of the proposals could remove any necessary protection;
 - whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom;
 - whether any burdens are being imposed on any person in the carrying out of an activity;
 - whether any savings or increases in cost are estimated to result from the proposals and, if so,
 - the reasons why savings or increases in cost should be expected, and
 - if it is practicable to make an estimate of the amount, that amount and how it is calculated,
 - any benefits (other than savings in cost) which are expected to flow from the implementation of the proposals.
- 2.9 For this reason, we would particularly welcome your views on how each aspect of the proposed changes in this consultation document meets the following tests:
- **Necessary protection:** The Minister making a Regulatory Reform Order must be of the opinion that it does not remove any necessary protection. This means that no order can be made unless the Minister is of the opinion that it would maintain any protections that the Minister considers to be necessary. Such protection relates to the checks and balances associated with a particular regulatory regime. The protection does not have to be statutory in nature and does not have to be for the purposes originally intended by Parliament. If the Minister considers a particular protection to be no longer necessary, he or she must provide the Parliamentary scrutiny committees with compelling evidence to support this view.

2.10 We do not believe that our proposals remove any necessary protection. We propose to remove the requirement for fire certificates, but the regime we intend to put in place offers more comprehensive protection for occupants of the premises involved. It extends the principles of risk reduction and elimination.

- **Rights and freedoms:** An RRO cannot be made unless the Minister is satisfied that it does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to enjoy. This test recognises that there are certain rights that it would not be fair to take away from people under these procedures.

2.11 We do not believe that our proposals would prevent anyone from exercising an existing right or freedom which they might reasonably expect to continue to enjoy. An explanation of how our proposals might affect rights and freedoms is contained in the analysis in Chapter 7.

We would welcome views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Other Safeguards

2.12 In order to provide for the effective reform of regulatory regimes, RROs can re-state existing burdens and create new burdens. But where that is the case stringent additional safeguards apply:

- **Proportionality:** If a new legal burden is being imposed, or an existing burden retained or increased, then the Minister must ensure that it is proportionate to the benefit it brings. This means, for example, that imposing a burden of several thousand pounds on charities for some negligible benefit would not pass the test.
- **Fair balance:** Before proposing any RRO that has the effect of imposing legal burdens, the Minister must be of the opinion that a fair balance is being struck between the interests of the person affected by the Order and the interests of the wider public. In this context, fairness does not mean that everyone must benefit. What it does mean is that the benefit to society as a whole must be such as to justify the additional burden on a small group or the individual.
- **Desirability:** The Minister making a Regulatory Reform Order imposing new burdens must also be of the opinion that the extent to which it removes burdens or brings other benefits makes the Order as a whole desirable.

2.13 The burdens that have been re-stated or are created are set out in our detailed explanation of the proposals in Chapters 4 to 6 below.

Consultation

- 2.14 The Act requires Departments to consult widely on regulatory reform proposals. It requires us to collect evidence on a number of issues from a wide range of consultees. The list of consultees, including the devolved administrations, to whom the document has been sent is at Annex B. It is also available on the Internet at:
- <http://www.safety-odpm.gov.uk/fire/conindex.htm>;
 - <http://www.cabinet-office.gov.uk/regulation/act/condocs.htm>; and
 - <http://www.ukonline.gov.uk>
- 2.15 Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at Annex F
- 2.16 The Parliamentary Committees who will deal with orders under the Regulatory Reform Act have requested that a note explaining the Parliamentary process for orders to be made under the Act be annexed to all consultation papers so that consultees understand when and to whom they are able to put their views, should they wish to do so. This is set out in Annex C. In Wales the applicability of the proposed Order will also be subject to approval in plenary session of the National Assembly for Wales and the procedures will be tailored accordingly. Comments received from consultees in Wales will be copied to the National Assembly for Wales.
- 2.17 This consultation document follows the format recommended by the Cabinet Office for such proposals. The criteria applicable to all UK public consultations under the Cabinet Office Code of Practice on Consultation are set out in Annex D.

Disclosure

- 2.18 Normal practice will be for details of representations received in response to this consultation document to be disclosed, or for respondents to be identified. While the Act provides for non-disclosure of representations, the Minister is required to include the names of all respondents in the list submitted to Parliament alongside the draft Order. You should note that:
- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
 - In all cases where your representation concerns information that may be damaging to the interests of a third party, the Minister is not obliged to pass it on to Parliament if he does not believe it to be true or he is unable to obtain the consent of the third party.
- 2.19 Please identify any information which you or any other person involved do not wish to be disclosed.

2.20 Finally, you should be aware that the scrutiny Committees will be able to request sight of your representation as originally submitted. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will only be used rarely and on an exceptional basis.

2.21 Comments should be sent by **22 November 2002** at the latest to:

Mark Coram
Fire Safety Reform Consultation
Office of the Deputy Prime Minister
Eland House
Bressenden Place
London SW1E 5DU

from whom further copies of this document may also be obtained.

You may also e-mail comments direct to fire.safetyreform@odpm-dft.gsi.gov.uk

CHAPTER 3:

Background to the Policy and Legislation at issue

Previous reviews

- 3.1 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.
- 3.2 That review's recommendations were built on by the Interdepartmental Review team on Fire Safety Legislation and Enforcement, which reported in June 1994¹. This body also took account of the recommendations of the Construction Task Force established by the 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 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 current proposals have been developed

- 3.3 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.
- 3.4 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. In many ways these Regulations establish the principles of fire risk assessment which will underpin a reformed legislative framework for fire safety.

¹ ISBN 0 85605 327 9

- 3.5 In August 2000 we established the Fire Safety Advisory Board to provide a strategic forum for fire safety within the structure of the Central Fire Brigades Advisory Council. 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 contained in this document have been developed not only by those who make the law and enforce it, but by those who will have to comply with it.
- 3.6 We are now consulting more widely to ensure that the views of the general public, the wider public sector, the business and voluntary sector and of any others with an interest in our proposals can be taken into account.

The current position

- 3.7 At present, there are two major pieces of specific fire safety legislation, the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, as amended. 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 will only apply in England and Wales. It will be for the Scottish Executive to consider the scope for parallel changes in Scotland. 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

- 3.8 Fire safety legislation, up to the introduction of the Fire Precautions Act, 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.
- 3.9 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.
- 3.10 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.
- 3.11 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.

3.12 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;
- the means for giving warning in case of fire

are such as may reasonably be required.

FIRE PRECAUTIONS (WORKPLACE) REGULATIONS 1997

3.13 These Regulations were made to implement two European Directives on health and safety at work, the European Council Framework Directive (89/391/EEC) and the European Council 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 which are amended to impose requirements concerning general fire precautions, are correctly 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;
- provide information, instruction and training to employees about the fire precautions.

3.14 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 they and their employees may have to other occupants of the building.

LEGISLATIVE OVERLAP

3.15 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 is to ensure that, in the event of a fire, the occupants can evacuate the premises safely. The Fire Precautions (Workplace) Regulations 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 will be made. These include Licensing Acts, the Theatres Act, the Gaming Act, Children’s Homes Regulations and many others. This is highly confusing for businesses and as such places a burden on them.

Community fire safety

- 3.16 Another concern has been that fire authorities are under no duty to promote fire safety in the community by educating the public on the dangers of fire and encouraging people to take the appropriate preventative measures. The Audit Commission, in its 1995 report, *In the Line of Fire*, suggested that the absence of a statutory duty was a disincentive to fire brigades to pursue initiatives that can reduce the incidence and consequences of fire.

CHAPTER 4:

The Proposals: Application, Scope and the Requirements

- 4.1 The intended reform set out in this document should, so far as possible, remove legislative overlap and bring fire safety law into one place, the Regulatory Reform (Fire Safety) Order, which will be enforced, in the main, by fire authorities. The proposed Order would replace both the Fire Precautions Act and the Fire Precautions (Workplace) Regulations and as much of the remaining legislation as is practical. This means that occupiers of premises designated under the Fire Precautions Act will no longer need to apply for a fire certificate. Annex A sets out the legislation we propose to amend or repeal. In amending and repealing existing legislation we shall not be removing any necessary protection, nor shall we prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. Where we remove provisions relating to fire precautions they will be replaced by provisions offering equivalent protection in the new regime. The proposed Order would also create a new duty on fire authorities to promote community fire safety.
- 4.2 The proposals will apply in England and Wales. The Fire Precautions Act and the Fire Precautions (Workplace) Regulations will remain in force in so far as they apply in Scotland. It will be for the Scottish Executive to propose to the Scottish Parliament any parallel reforms that they consider appropriate.
- 4.3 Given that the aim of the reform is to achieve clarity and to reduce the sheer volume of legislation, we should like, so far as is possible, to place all the requirements on the face of the Order. The Order would be based around a general duty of fire safety care with specific requirements which will need to be met to comply with that duty.
- 4.4 We shall, of course, continue to meet our obligations under EU legislation. The relevant Directives in respect of fire safety are:
- European Council Directive (89/391/EEC) on the introduction of measures to encourage improvements in the safety and health of workers at work (the Framework Directive);
 - European Council Directive (89/654/EEC) concerning the minimum safety and health requirements for the workplace (the Workplace Directive);
 - European Directive (98/24/EC) on the health and safety of workers from risks related to chemical agents at work (the Chemical Agents Directive);
 - European Directive 99/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (the Explosive Atmospheres Directive).

- 4.5 As mentioned in the previous chapter, the Framework and Workplace Directives are currently implemented by the Workplace fire precautions legislation. The Chemical Agents Directive and the Explosive Atmospheres Directive will be implemented by the draft Dangerous Substances and Explosive Atmospheres Regulations on which the Health and Safety Executive have recently consulted². All the existing provisions which implement these Directives will be incorporated into our proposed Order. As such we shall be re-stating existing burdens which we believe strike a fair balance between those affected and the people whom they are intended to protect, and are proportionate in terms of the safety benefits they bring. In our view, they help make the proposed new regime desirable as a whole.
- 4.6 If we are to have one fire safety regime, and we are to continue to meet our European obligations, then clearly the new regime will need to be based on the risk assessment-based principles of the Framework and Workplace Directives. But those principles will need to be extended to all occupants of premises, not just employees, if we are to remove the protection afforded by the Fire Precautions Act and protect all those who may be at risk from fire. The broad aim is to ensure that, wherever the proposed Order applies, people take proper care for their own safety and the safety of others who might not be familiar with the premises. We shall also aim to remove, wherever possible, fire safety provisions in other legislation where it can be properly dealt with by our regime.

We would welcome views as to our proposals to remove the requirement for fire certificates but to extend the application of existing risk assessment-based legislation to non-employees.

We would welcome views about the amendment, repeal or revocation of the legislation listed in Annex A. We should also be interested to know if consultees consider that any legislation, not listed in Annex A, should be repealed, revoked or amended as part of the reform.

- 4.7 We must also bear in mind that circumstances might arise which could require amendments to be made to address new problems. We therefore propose to re-state the existing power to make Regulations which is contained in the Fire Precautions Act. There would be additions to the power to reflect the nature of the proposed regime. So, regulations might deal with the carrying out of risk assessments, the principles of prevention to be applied and the general duties of employees at work. They might also impose requirements on persons other than the responsible person and make provision as to persons who are to be responsible for any contravention of the regulations.
- 4.8 Any regulations made by the Secretary of State might impose requirements –
- (a) as to the provision, maintenance and keeping free from obstruction of means of escape in case of fire;
 - (b) as to the provision and maintenance of means for securing that any means of escape can be safely and effectively used at all material times;
 - (c) as to the provision and maintenance of means for fighting fire and means for giving warning in case of fire;

² HSE Consultation Document CD180

- (d) as to the internal construction of the premises and the materials used in that construction;
 - (e) for prohibiting altogether the presence or use in the premises of furniture or equipment of any specified description, or prohibiting its presence or use unless specified standards or conditions are complied with;
 - (f) for ensuring that persons employed to work in premises receive appropriate instruction or training in what to do in case of fire;
 - (g) for ensuring that, in particular circumstances, specified numbers of attendants are stationed in specified parts of the premises;
 - (h) as to the carrying out of assessments of the risk to persons in case of fire; and
 - (i) as to the keeping of records of instruction or training given, or other things done in order to comply with the regulations.
- 4.9 Before making any regulations, the Secretary of State would be required to consult with such persons or bodies as appear to him to be necessary.
- 4.10 We consider it desirable that the proposed regime contains the same degree of flexibility as the existing one and that the Secretary of State should continue to be able to introduce secondary legislation to meet particular circumstances.

We would welcome comments on the proposal to re-state and modify the Regulation-making powers contained in the Fire Precautions Act.

The Responsible Person

- 4.11 We need to ensure that we continue to meet our obligations under European Directives, in particular, the Framework and Workplace Directives, the Chemical Agents Directive and the Explosive Atmospheres Directive. This means that wherever there is an employer, he or she will continue to be responsible for the safety of his or her employees. In order to achieve the broader coverage of the legislation which we desire, we propose extending this definition. Consequently, we propose that the responsible person will be:
- (a) the employer in relation to any workplace which is to any extent under his control;
 - (b) in relation to any premises where there is no employer –
 - (i) the person (whether the occupier or owner of the premises or not) who has the overall management of the premises; or
 - (ii) where there is no one with overall management responsibility, the occupier of the premises; or
 - (iii) where neither (i) or (ii) apply, the owner of the premises.

- 4.12 Inclusion of “the owner” in the definition would mean that empty buildings would be brought within the proposed Order; for instance a new building which had received Building Regulations approval, but had not yet been occupied. We do not believe that this will create a significant new burden. Owners would already be subject to a duty of care in other legislation such as the Occupiers Liability Act 1957. They would now be under a duty to carry out a risk assessment but this would largely involve ensuring that the building was secure. We propose that “owner” should be defined as in the Fire Precautions Act. That is, the person who receives the rackrent of the premises in question, or the person who would receive the rackrent if the premises were let at a rackrent.
- 4.13 Other people, such as landlords, may be in a position to exercise varying degrees of control over premises and we propose that they should bear a relevant degree of responsibility under the proposed Order. However, this would not detract from the primary responsibilities and duties placed on employers and other responsible persons.
- 4.14 Equally people might be appointed or employed to undertake duties which bear on the safety of the premises. We have in mind contractors employed to install, maintain or test fire safety equipment or systems. It would be for the responsible person to ensure that any person he or she employs to carry out such work is competent to do so. There are a number of ways of doing this. The responsible person might use a contractor who is certificated under a suitably accredited third party certification scheme; he or she might ask for proof of qualifications or seek references. Advice about selecting competent contractors would be included in the guidance documents supporting the proposed Order. Where it can be established that an offence has been committed under the Order (for the proposed offences, see paragraph 5.41) and this has been caused by the negligence, failure or deliberate misrepresentation on the part of the contractor, we propose that the enforcing authority should be able to take action against the contractor. Action could also be taken against the responsible person if that seemed to be justified in the circumstances of the case.
- 4.15 Under the proposed Order the responsible person will be responsible not only for the safety of employees, but for anyone on the premises and anyone who might be affected by a fire. This extends the burden on employers and creates a new burden on self-employed people and some people in the voluntary sector. This is covered further in the section on application below.

We would welcome views on the proposed definition of the responsible person, including whether we should continue to use the definition of “owner” contained in the Fire Precautions Act. We would also welcome views on our proposals to allow enforcing authorities to take action against contractors.

Application

- 4.16 Premises designated under the Fire Precautions Act 1971 as requiring fire certificates include, subject to certain criteria, factories, offices, shops and railway premises where people are employed to work, and hotels and boarding houses. The Fire Precautions (Workplace) Regulations cover virtually all workplaces. The new fire safety regime would cover virtually all workplaces and places to which the public have access, but not domestic premises. The exceptions are set out later in this chapter.

- 4.17 The proposed Order would therefore apply to certain groups not already covered including premises used by the self-employed (but not where they work at home) and elements of the voluntary sector.
- 4.18 Self-employed people not working at home are already responsible, under the Health and Safety at Work etc Act, for the safety of people on their premises. They should already be carrying out risk assessments which should include the assessment of the risk from fire. Moreover, they are, by definition (since they do not employ anyone), likely to use smaller premises with lower levels of fire risk. In that sense, the new Order will add little or no additional requirements to existing law, but we accept that some people, who have not met the requirements imposed on them by existing legislation might incur expenditure to comply with the proposed Order. An estimate of this additional cost is set out in the partial regulatory impact assessment.
- 4.19 With regard to the voluntary sector, the workplace fire precautions legislation already applies to charities where they are employers. The extension will therefore be to voluntary workers in premises which are not their home. There is some uncertainty as to how far the existing law applies to these groups already. For instance, it is not clear whether volunteers working in charity shops are employees. We certainly consider it strikes a fair balance between the rights of the individual and of the public interest, and is proportionate in that the fire safety law should apply to such premises in the same way as it would to the shop next door which might have employees. Another example is a body such as the Scouts Association. This body already requires all its premises to comply with the Management of Health and Safety at Work Regulations. Village halls, which would frequently accommodate the Scouts and other voluntary organisations are, in many cases, subject to the fire safety requirements of the licensing law applying to places of occasional entertainment.
- 4.20 We therefore believe that the extension of fire safety law to the voluntary sector should not create significant new burdens and that the extension could therefore be described as proportionate, as striking a fair balance between the interests of the individual and the public interest, and as helping secure the desirable overall goal of a modern risk-based general fire safety regime.

We would welcome views on our proposals to extend the scope of fire safety legislation to the self-employed and voluntary sector.

- 4.21 Details of the proposed application of the Order are set out in the following paragraphs. They are based on the provisions of the workplace fire precautions legislation but extend protection to non-employees.
- 4.22 We propose that the Order, except for power of entry to ascertain cause of fire (see paragraphs 6.1 to 6.3) shall not apply to –
- (a) domestic premises;
 - (b) an offshore installation within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995;
 - (c) a ship other than a ship which is permanently moored or is in the course of construction or repair by persons who include persons other than the master and crew of the ship;

- (d) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings;
- (e) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act;
- (f) a mine within the meaning of section 180 of the Mines and Quarries Act 1954, other than any building on the surface at a mine.

4.23 These are the same exclusions as for the workplace fire precautions legislation. Other than (a) and (d), these are areas subject to alternative regimes which we should not wish the proposed Order to replace.

4.24 We propose that the Order shall not apply to occasional work or short-term work involving –

- (a) domestic service in a private household (including people such as live-in nannies); or
- (b) work regulated as not being harmful, damaging or dangerous to young people in a family undertaking.

4.25 These are the same exclusions as those currently in the Management of Health and Safety at Work Regulations.

We would welcome views on the proposed application of the new Order.

Mitigation of the Effects of a Fire

4.26 We also wish the proposed Order to offer reasonable protection to people in the vicinity of a place who might be affected by a fire, as well as the occupants. Given that, in most circumstances, the only way to achieve this would be to prevent fire occurring in the first place or to prevent it spreading, we feel that provisions implementing such requirements would inevitably reduce the impact of fire on the environment, reduce property damage and reduce risks to fire fighters.

4.27 Furthermore, we believe that the provisions of the draft Dangerous Substances and Explosive Atmospheres Regulations, on which the Health and Safety Executive have recently consulted, addressing as they do, the potential hazards of fires in places where dangerous chemicals are stored or used, build on the existing provisions of the Fire Precautions (Workplace) Regulations to provide a fire safety regime which reduces the risk of serious fires. The draft Regulations are intended to implement the safety aspects of European Directive 98/24/EC on the health and safety of workers from risks related to chemical agents at work (the Chemical Agents Directive) and Directive 99/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (the Explosive Atmospheres Directive). We propose that the provisions of these Regulations, so far as they concern general fire safety, would be incorporated within our proposed Order.

- 4.28 A dangerous substance is defined in the Regulations as –
- (a) a substance or preparation which meets the criteria in the approved classification and labelling guide for classification as a substance or preparation which is explosive, oxidising, extremely flammable, highly flammable or flammable, whether or not that substance or preparation is classified under the Chemicals (Hazard Information and Packaging for Supply) Regulations 1994;
 - (b) a substance or preparation which because of its physico-chemical or chemical properties and the way it is used or is present creates a risk, not being a substance or preparation falling within (a); or
 - (c) any dust, whether in the form of solid particles or fibrous materials or otherwise, which can form an explosive mixture with air or an explosive atmosphere, not being a substance or preparation falling within (a) or (b).
- 4.29 This definition would be carried forward into our proposed Order.
- 4.30 The Regulations place a duty on employers to carry out a risk assessment and then to apply measures to control risks and to mitigate the detrimental effects of a fire or the other harmful physical effects arising from dangerous substances. Included in this is a requirement on the employer to provide measures to avoid the propagation of fires. The Regulations will apply to the self-employed and will seek to protect other persons who may be affected. The incorporation of these provisions in our Order should not, therefore, create a new burden.
- 4.31 We propose that the new fire safety regime should extend the principles of the Regulations by requiring the responsible person in all premises covered by the Order to take steps to mitigate the detrimental effects of a fire. Like all the specific requirements imposed by the proposed Order, this requirement will be limited to what is necessary, reasonable and practical in the circumstances. We believe this will allow for consistency and simplicity. While it represents an additional duty we believe it desirable that people who might be affected by a fire should be protected. The additional duty is proportionate and strikes a fair balance between the rights of the individual and the public interest because it should not add significantly to existing burdens since existing fire precautions include elements which restrict fire spread such as fire doors. The larger element of protection to people who might be affected by a serious fire would already be in place through the making of the Dangerous Substances and Explosive Atmospheres Regulations. In our view, these provisions would help make the proposed new regime desirable as a whole.
- 4.32 We shall, of course, re-examine the Regulations when they are made to ensure that they are consistent with what we propose.

We would welcome views as to our proposals to incorporate the provisions of the draft Dangerous Substances Regulations into the proposed Order and to extend the requirement to mitigate the detrimental effects of a fire to all premises covered by the Order.

The Requirements of the Proposed Fire Safety Regime

- 4.33 We intend that the requirements of the proposed Order should reflect the requirements of the Fire Precautions (Workplace) Regulations which implement the European Workplace and Framework Directives. The Order must continue to implement these Directives but, in addition, will extend protection explicitly to all occupants, not just employees. Since the fire precautions put in place by employers should already take into account other people on the premises and the fact that they or their employees have a duty of care to other occupants (for example, visitors, or in the case of care homes, residents), the new regime should not impose significant additional burdens on employers.

The Fire Safety Duties

- 4.34 The fire safety duties which we propose to include in the Order are set out in the following paragraphs.

RISK ASSESSMENT

- 4.35 The responsible person would have to make a suitable and sufficient assessment of the risks to persons to which they are exposed for the purpose of identifying the measures he or she needs to take to comply with the requirements and prohibitions imposed on him or her by the Order.
- 4.36 Where a dangerous substance is present on the premises, the risk assessment would include consideration of all the additional relevant factors including the amount of the substance and its hazardous properties and the circumstances of the work including the work processes.
- 4.37 The responsible person would have to review the assessment regularly so as to keep it up to date and if:
- there is reason to suspect that it is no longer valid; or
 - there has been a significant change in the matters to which it relates including when the premises, work processes, or organisation of the work undergoes significant changes, extensions or conversions,

and where as a result of any such review, changes to an assessment are required, the responsible person would have to make them. This underlines the principle of dynamic risk assessment. In other words risk assessment is an ongoing process. The responsible person could not carry out his risk assessment and then forget about it; it must be kept constantly under review.

- 4.38 The responsible person would not employ a young person unless he or she had made or reviewed a risk assessment taking particular account of the special factors applying to young persons as are set out in the Management of Health and Safety Regulations.

- 4.39 The responsible person would record the significant findings of the assessment, including the measures he or she had taken in order to comply with the Order; and any group of his or her employees identified as being especially at risk in the following circumstances:
- (a) if he or she employs five or more employees;
 - (b) if the premises, or people responsible for the premises, are subject to any legislation providing for licensing or certification; or
 - (c) if an alterations notice is in force in relation to the premises (see paragraphs 5.22 to 5.28).
- 4.40 No new work activity involving a dangerous substance would commence unless the risk assessment had been made and the measures required by or under the Order had been implemented. It would be for the responsible person to judge what constituted a new activity. The key would be to assess whether the risk had changed and whether the risk assessment still addressed the risks adequately.
- 4.41 These requirements in respect of risk assessments are drawn from the workplace fire precautions legislation and the draft Dangerous Substances and Explosive Atmospheres Regulations. We are therefore proposing to re-state existing burdens (or burdens which will exist) which we consider to be fair and proportionate and to strike a fair balance between the interests of those affected and the public interest given the benefits in terms of safety. We suggest that the threshold for the requirement to record the significant findings should continue to be where the employer employs five or more employees in order to maintain consistency with health and safety legislation. This would need to be kept under review and considered again in the event of any changes to this aspect of health and safety law. The proposal to extend this requirement to licensed premises and premises subject to an alterations notice is explained in paragraphs 4.105 and 5.24. In our view, these requirements help make the proposed new regime desirable as a whole.

We would welcome views on the proposed risk assessment requirements.

GENERAL DUTY TO ENSURE SAFETY

- 4.42 We propose that the responsible person should take such measures as it is reasonable for a person in his or her position to take to ensure, so far as is reasonably practicable, that the premises, all means of access to and egress from, and any plant or substance in or on the premises is or are, in the context of general fire safety, safe.
- 4.43 There are already general duties in the Health and Safety at Work etc Act for employers to ensure the health, safety and welfare of their employees and others on the premises. This includes safety from fire. The workplace fire precautions served to clarify the existing duty in respect of fire though it applied only to employees. In creating a fire safety regime we should specifically re-state the general duty in respect of fire safety. In applying the duty explicitly to non-employees we are not creating a new legal burden since this was already contained in the Health and Safety at Work etc Act. Neither should this create new practical burdens since non-employees have been protected by other legislation such as the Fire Precautions Act.

PRINCIPLES OF PREVENTION TO BE APPLIED

- 4.44 The responsible person should implement preventive and protective measures on the basis of the following principles:
- (a) avoiding risks;
 - (b) evaluating the risks which cannot be avoided;
 - (c) combating the risks at source;
 - (d) adapting to technical progress;
 - (e) replacing the dangerous by the non-dangerous or less dangerous;
 - (f) developing a coherent overall prevention policy which covers technology, organisation of work and the influence of factors relating to the working environment;
 - (g) giving collective protective measures priority over individual protective measures; and
 - (h) giving appropriate instructions to employees and other persons on the premises as appropriate.
- 4.45 These principles are drawn from the workplace fire precautions legislation.

We would welcome views on the suggested principles of prevention to be applied bearing in mind the need to ensure full compliance with EU legislation.

FIRE SAFETY ARRANGEMENTS

- 4.46 We propose that the responsible person should make such arrangements as are appropriate, having regard to the nature of his or her activities and the size of his or her undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures. He or she should record these arrangements in the following circumstances:
- (a) if he or she employs five or more employees;
 - (b) if the premises, or people responsible for the premises, are subject to any legislation providing for licensing or certification; or
 - (c) if an alterations notice is in force in relation to the premises.
- 4.47 “Fire safety arrangements” means all the things that the responsible person needs to do to comply with the order such as appointing employees to various functions, establishing emergency procedures or displaying fire action notices. As mentioned above, we believe we should retain the threshold of five or more employees to maintain consistency with health and safety legislation.

We would welcome views on the proposed requirements for fire safety arrangements.

ELIMINATION OR REDUCTION OF RISKS FROM DANGEROUS SUBSTANCES

- 4.48 We propose that where a dangerous substance is present on the premises, the responsible person should ensure that risk related to the presence of the substance is either eliminated or reduced so far as is reasonably practicable. Wherever possible, and so far as is reasonably practicable, he or she should replace it with a substance or process which either eliminates or reduces the risk.
- 4.49 Where this is not reasonably practicable he or she should, so far as is reasonably practicable, apply measures consistent with the risk assessment and appropriate to the nature of the activity or operation, including the following measures in order to control the risk:
- (a) reduce the quantity of dangerous substances to a minimum;
 - (b) avoid or minimise the release of a dangerous substance;
 - (c) control the release of a dangerous substance at source;
 - (d) prevent the formation of an explosive atmosphere, including the application of appropriate ventilation and ensure that any release of a dangerous substance which may give rise to risk is suitably collected, safely contained, removed to a safe place, or otherwise rendered safe, as appropriate;
 - (e) avoid
 - ignition sources including electrostatic discharges; and
 - such other adverse conditions as could result in harmful physical effects from a dangerous substance; and
 - (f) segregate incompatible dangerous substances.
- 4.50 We propose that the responsible person, in all premises to which the Order would apply, should take measures to mitigate the detrimental effects of a fire. Where dangerous substances are present these will include –
- (a) reducing to a minimum the number of persons exposed;
 - (b) measures to avoid the propagation of fires and explosions;
 - (c) providing explosion pressure relief arrangements;
 - (d) providing explosion suppression equipment;
 - (e) providing plant which is constructed so as to withstand the pressure likely to be produced by an explosion; and
 - (f) providing suitable personal protective equipment.

- 4.51 The responsible person should ensure that if an explosive atmosphere contains several types of flammable or combustible or flammable and combustible gases, vapours, mists or dusts, then the protective measures are appropriate to the greatest potential risk. He or she should also arrange for the safe handling, storage and transport of dangerous substances and waste containing dangerous substances.
- 4.52 These requirements are drawn from the draft Dangerous Substances and Explosive Atmospheres Regulations.

We would welcome views on the proposed requirements for the elimination or reduction of risks from dangerous substances bearing in mind the need to ensure full compliance with EU legislation.

FIRE-FIGHTING AND FIRE DETECTION

- 4.53 We propose that where necessary to ensure the safety of persons in case of fire (whether due to the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances), the responsible person should ensure that:
- (a) the premises are, to the extent that it is appropriate, equipped with appropriate fire-fighting equipment and with fire detectors and alarms; and
 - (b) Any non-automatic fire-fighting equipment so provided is easily accessible, simple to use and indicated by signs.
- 4.54 For the purposes of (a) what is appropriate would depend on the dimensions and use of the premises, the equipment contained on the premises, the physical and chemical properties of the substances likely to be present and the maximum number of persons that may be present at any one time.
- 4.55 We propose that the responsible person should, where necessary:
- take measures for fire-fighting in the premises, adapted to the nature of the activities carried on there and the size of the undertaking and of the premises concerned;
 - nominate employees to implement those measures and ensure that the number of such employees, their training and the equipment available to them are adequate, taking into account the size of, and the specific hazards involved in, the premises concerned; and
 - arrange any necessary contacts with external emergency services, particularly as regards rescue work and fire-fighting.
- 4.56 These proposed requirements are drawn from the workplace fire precautions legislation. The actual purpose for which fire-fighting equipment is provided has never been clearly defined. Although the Fire Precautions Act also contains requirements for fire-fighting equipment, we know that that Act is primarily concerned with the safe evacuation of occupants of a building. Theoretically, someone could notice a fire in a waste paper basket, leave the room and warn other occupants to evacuate the building, leaving the fire to spread. Normally, assuming the fire precautions were adequate, everyone would escape safely. But we think the law should reflect the common sense view that extinguishing the fire at source must reduce the risk to life in case something goes wrong.

- 4.57 We are now moving to a regime which requires the implementation of measures to reduce the risk of fire and the spread of fire. This leads us to consider the purpose for which fire fighting equipment may be required. We feel that the existing law is unclear in this regard and does not reflect the basis on which fire-fighting equipment is normally provided at present. We therefore propose that, in addition to the above requirements, the proposed Order should make it clear that fire fighting equipment should be considered as a possible means of reducing a risk of fire spreading, providing protection and for providing assistance to others, and not merely as a means of safeguarding the means of escape. It should also be considered as a possible means of mitigating the detrimental effects of a fire.
- 4.58 This should not impose an additional burden as it is intended as a clarification of the purposes to which fire-fighting equipment might be put and how it might be used as a particular means of addressing fire safety problems. We believe that in most places, fire fighting equipment already exists for the purposes outlined above.

We would welcome views on our proposal to clarify the purpose of fire-fighting equipment so that it may be considered as a possible means of reducing a risk and as means of providing protection and for providing assistance to others. We should be particularly interested to know whether consultees could identify any circumstances whether this might significantly increase costs.

EMERGENCY ROUTES AND EXITS

- 4.59 We propose that where necessary in order to ensure the safety of persons in case of fire, the responsible person should ensure that routes to emergency exits from premises and the exits themselves are kept clear at all times.
- 4.60 We also intend to re-state the specific requirements in relation to emergency routes and exits which are contained in the workplace fire precautions legislation. These include the requirement that emergency routes and exits should lead as directly as possible to a place of safety; that it should be possible for persons to evacuate the premises as quickly and as safely as possible; that the number, distribution and dimensions of emergency routes and exits should be adequate having regard to the use, equipment and dimensions of the premises and the maximum number of persons who may be present there at any one time, and other requirements dealing with the nature of the exit doors, signage and lighting.

We would welcome views on the requirements for emergency routes and exits bearing in mind the need to ensure full compliance with EU legislation.

MAINTENANCE

- 4.61 We propose that where necessary in order to safeguard the safety of persons in case of fire, the responsible person shall ensure that the premises and any equipment provided in connection with fire-fighting, fire detection or emergency routes and exits are subject to a suitable system of maintenance and are maintained in an efficient state, in efficient working order and in good repair. This applies to facilities provided to meet the requirements of the proposed Order or any other legislation, including legislation repealed or revoked by the Order.

- 4.62 In *Fire Safety Legislation for the Future* we said that fire precautions should take account of the need to keep to a minimum the risk to fire fighters who may have to enter a burning building. We believe that the measures outlined above for the prevention of fire and for mitigating the detrimental effects of a fire go a long way to achieving that aim. In addition to that, however, the responsible person will also be required to maintain any facilities which have been provided under the Building Regulations for the use and protection of fire fighters.
- 4.63 This is an additional burden which we consider to strike a fair balance between the interests of those affected and the public interest, to be desirable and to be proportionate. At present, the law provides for the installation in new buildings of facilities specifically for the use and protection of the fire service, but little to ensure that they are fit for use when they are needed. This seems irrational and we consider it right to address this in our Order.

We would welcome views on our proposal to extend the requirement to maintain fire protection equipment.

SAFETY ASSISTANCE

- 4.64 We propose that the responsible person should, subject to certain exceptions, appoint one or more competent persons to assist him in undertaking the measures he or she needs to take to comply with the requirements and prohibitions imposed by the Order.
- 4.65 The responsible person should make arrangements for ensuring adequate co-operation between them and ensure that the number of persons appointed, the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of the premises, the risks to which persons are exposed and the distribution of those risks throughout the premises.
- 4.66 If the responsible person appoints someone who is not his or her employee, that person should:
- be informed of the factors which the responsible person knows or suspects affect the safety of any other person who may be affected by the conduct of the undertaking; and
 - have access to the information which the responsible person is required to provide under the Order (see paragraphs 4.79 to 4.85).
- 4.67 The responsible person should also ensure that any person he or she appoints is given such information about any person working in the undertaking as is necessary to enable that person properly to carry out his or her functions.
- 4.68 A person would be regarded as competent where he or she has sufficient training and experience or knowledge and other qualities to enable him or her properly to assist in undertaking the measures needed to comply with the requirements of the Order.
- 4.69 The requirement to appoint a competent person should not apply to a self-employed employer who is not in partnership with any other person where he or she has sufficient training and experience or knowledge to undertake the relevant measures. Nor should it apply to individuals who are employers and who are together carrying on business in partnership where at least one of the individuals concerned has sufficient training and experience or knowledge and other qualities.

- 4.70 Where there is a competent person in the responsible person's employment, that person should be appointed in preference to a competent person not in his employment.
- 4.71 These requirements are drawn from the workplace fire precautions legislation and reflect longstanding health and safety law. In smaller businesses the employer will be able to meet the requirements of the Order himself. The purpose of these requirements is to ensure that, where necessary, he appoints someone who is competent to assist him. We are aware of no evidence to indicate that these requirements are not proportionate and do not strike a fair balance between the rights of those affected and the public interest. We believe the proposed regime, including these requirements, would be desirable as a whole.

We would welcome views on the proposed requirements in respect of safety assistance.

PROCEDURES FOR SERIOUS AND IMMINENT DANGER AND FOR DANGER AREAS

- 4.72 We propose that the responsible person should:
- (a) establish and where necessary give effect to appropriate procedures to be followed in the event of serious and imminent danger to persons;
 - (b) nominate a sufficient number of competent persons to implement those procedures in so far as they relate to the evacuation of persons from the premises; and
 - (c) ensure that no person has access to any area to which it is necessary to restrict access on grounds of safety unless the person concerned has received adequate safety instruction.
- 4.73 These procedures should:
- (a) so far as is practicable, require any persons who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;
 - (b) enable the persons concerned to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and
 - (c) save in exceptional cases require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.
- 4.74 Where a dangerous substance is present on the premises, there would be a number of additional requirements. In the event of fire arising from an accident, incident or emergency related to the presence of the dangerous substance, the responsible person should ensure that:
- (a) procedures, including the provision of appropriate first-aid facilities and relevant safety drills (which shall be tested at regular intervals), have been prepared which can be put into effect when such an event occurs;
 - (b) information on emergency arrangements is available;

- (c) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs;
 - (d) where necessary, before any explosion conditions are reached, visual, or audible, warnings shall be given and persons withdrawn; and
 - (e) where the risk assessment indicates it is necessary, escape facilities should be provided and maintained to ensure that, in the event of danger, persons can leave endangered places promptly and safely.
- 4.75 We propose that the responsible person should ensure that the information on the emergency arrangements, procedures, warnings and other communication systems and escape facilities described above is made available to relevant accident and emergency services to ensure those services, whether internal or external to the premises, are able to prepare their own response procedures and precautionary measures.
- 4.76 In the event of an accident, incident or emergency related to the presence of a dangerous substance on the premises, the responsible person should ensure that –
- (a) immediate steps are taken to –
 - mitigate the effects of the event;
 - restore the situation to normal; and
 - inform those persons who may be affected; and
 - (b) only those persons who are essential for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with –
 - appropriate personal protective equipment and protective clothing; and
 - any necessary specialised safety equipment and plant which shall be used until the situation is restored to normal.
- 4.77 These requirements, adapted to reflect the extension of protection to non-employees, are drawn from the workplace fire precautions legislation and the draft Dangerous Substances and Explosive Atmospheres Regulations.
- 4.78 We are aware of no evidence to indicate that these requirements would not be proportionate and would not strike a fair balance between the rights of those affected and the public interest. We believe the proposed regime, including these requirements, would be desirable as a whole.

We would welcome views on the proposed requirements in respect of procedures for serious and imminent danger.

PROVISION OF INFORMATION

- 4.79 We propose that where the responsible person is an employer, he or she should provide his employees and, where appropriate, other people on the premises, with comprehensible and relevant information on:

- (a) the risks to them identified by the risk assessment;
 - (b) the preventive and protective measures;
 - (c) the procedures for serious and imminent danger;
 - (d) the identities of those persons nominated by him to implement fire-fighting measures and the procedures for serious and imminent danger; and
 - (e) the risks notified to him by any other responsible person sharing the premises.
- 4.80 The responsible person should, before employing a child, provide a parent of the child with comprehensible and relevant information on:
- (a) the risks to him identified by the risk assessment;
 - (b) the preventive and protective measures; and
 - (c) the risks notified to him by other responsible persons.
- 4.81 For the purposes of this requirement, “parent of the child” includes a person who has parental responsibility, within the meaning of section 3 of the Children Act 1989, for the child.
- 4.82 Where a dangerous substance is present on the premises, the responsible person, where he or she is an employer, should provide his or her employees with:
- (a) the details of any such substance including –
 - the name of the substance and the risk which it presents;
 - access to any relevant safety data sheet; and
 - legislative provisions (concerning the hazardous properties of any such substance) which apply to the substance;
 - (b) the significant findings of the risk assessment; and
 - (c) suitable and sufficient information on the appropriate precautions and actions to be taken by the person in order to safeguard them and other persons.
- 4.83 This additional information required in respect of dangerous substances should be:
- adapted to take account of significant changes in the activity carried out or methods or work used by the responsible person; and
 - provided in a manner appropriate to the risk identified by the risk assessment.
- 4.84 These requirements are drawn from the workplace fire precautions legislation and the draft Dangerous Substances and Explosive Atmospheres Regulations. The requirement to provide detailed information would not normally extend beyond employees. It would not, for instance, be practical to provide details of the risk assessment to anyone entering a

shop. But it would be necessary to display certain information such as fire action notices and information about particular hazards.

- 4.85 We consider these requirements to be proportionate and that they strike a fair balance between the rights of those affected and the public interest. We believe the proposed regime, including these requirements, would be desirable as a whole.

We would welcome views on the proposed requirements in respect of provision of information.

CO-OPERATION AND CO-ORDINATION

- 4.86 We propose that where two or more responsible persons share premises (whether on a temporary or a permanent basis), each such person should:
- (a) co-operate with the other responsible person concerned so far as is necessary to enable them to comply with the requirements and prohibitions imposed on them by the Order;
 - (b) (taking into account the nature of his or her activities) take all reasonable steps to co-ordinate the measures he or she takes to comply with the requirements and prohibitions imposed by the Order with the measures the other responsible persons are taking; and
 - (c) take all reasonable steps to inform the other responsible persons concerned of the risks to their employees' safety arising out of the conduct by him or her of the undertaking.

- 4.87 These requirements, adapted to reflect the definition of the responsible person beyond employers, are drawn from the workplace fire precautions legislation.

- 4.88 We consider these requirements to be proportionate and that they strike a fair balance between the rights of those affected and the public interest. We believe the proposed regime, including these requirements, would be desirable as a whole.

We would welcome views on the proposed requirements in respect of the provision of information.

PERSONS WORKING IN HOST EMPLOYERS' OR SELF-EMPLOYED PERSONS' UNDERTAKINGS

- 4.89 We propose that the responsible person should ensure that the employer of any employees from an outside undertaking and any self-employed person working in his undertaking, are provided with comprehensible information on –
- (a) the risks to those employees; and
 - (b) the measures taken by the responsible person in compliance with the requirements and prohibitions imposed by the Order.

- 4.90 The responsible person should ensure that any person working in his or her undertaking who is not his or her employee is provided with appropriate instructions and comprehensible information regarding any risks to that person.
- 4.91 The responsible person should also ensure that where an employee of another employer is working in his or her undertaking, both the employer and employee are provided with sufficient information to enable them to identify any person nominated by the responsible person to take measures for fire-fighting and to implement evacuation procedures.
- 4.92 These requirements are drawn from the workplace fire precautions legislation.
- 4.93 We consider them to be proportionate and to strike a fair balance between the rights of those affected and the public interest. We believe the proposed regime, including these requirements, would be desirable as a whole.

We would welcome views on the proposed requirements in respect of persons working in host employers' or self-employed persons' undertakings.

CAPABILITIES AND TRAINING

- 4.94 We propose that the responsible person should ensure that his employees are provided with adequate fire safety training –
- (a) on their being recruited into their employment; and
 - (b) on their being exposed to new or increased risks because of –
 - (i) their being transferred or given a change of responsibilities;
 - (ii) the introduction of new work equipment or a change respecting work equipment already in use;
 - (iii) the introduction of new technology; or
 - (iv) the introduction of a new system of work or a change respecting a system of work already in use.
- 4.95 This training should:
- (a) include suitable and sufficient instruction and training on the appropriate precautions and actions to be taken by the employee in order to safeguard himself and other persons on the premises;
 - (b) be repeated periodically where appropriate;
 - (c) be adapted to take account of any new or changed risks to the safety of the employees concerned; and
 - (d) take place during working hours.

4.96 Employees should not be charged for training. These requirements are drawn from the workplace fire precautions legislation. We consider them to be proportionate, to strike a fair balance between the rights of those affected and the public interest. We believe the proposed regime, including these requirements, would be desirable as a whole.

We would welcome views on the proposed requirements in respect of capabilities and training.

GENERAL DUTIES OF EMPLOYEES AT WORK

- 4.97 We propose that every employee should, while at work –
- (a) take reasonable care for the safety of him or herself and of other persons who may be affected by his or her acts or omissions at work;
 - (b) as regards any duty or requirement imposed on his or her employer or any other person by the Order, co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with; and
 - (c) inform his employer or any other employee with specific responsibility for the safety of his fellow employees –
 - of any work situation which a person with his or her training and instruction would reasonably consider represented a serious and immediate danger to safety; and
 - of any matter which a person with his or her training and instruction would reasonably consider represented a shortcoming in the employer's protection arrangements for safety,

insofar as that situation or matter either affects the safety of that first-mentioned employee or arises out of or in connection with his own activities at work, and has not previously been reported to his employer or to any other employee of that employer in accordance with this requirement.

4.98 These requirements are drawn from the workplace fire precautions legislation. We consider them to be proportionate and to strike a fair balance between the rights of those affected and the public interest. We believe the proposed regime, including these requirements, would be desirable as a whole.

We would welcome views on the proposed requirements in respect of the general duties of employees at work.

Guidance

4.99 The Government intends to publish a series of guidance documents which will contain advice to users as to how they can meet their responsibilities under the new order. They will need to be easy to understand but sufficiently detailed so as to be of practical use to both the responsible person and the enforcing authority. These documents will explain the principles of risk assessment and the requirements of the new law. They will give practical examples of different solutions to fire safety problems. The documents will be aimed at particular types of building and business sectors. Our intention is to produce separate guides for the following premises:

- Care homes
- Schools, boarding schools, further education establishments
- Offices, shops
- Factories, warehouses, superstores
- Pubs, clubs, restaurants
- Theatres, cinemas
- Museums, galleries, libraries
- Hotels, boarding houses, hostels
- Sub-surface railway stations

4.100 The Government will consult separately on these guidance documents and they will be submitted to the Parliamentary Scrutiny Committees as the Order passes through its scrutiny stages. We propose that the guidance should be non-statutory since we believe that fits well with a goal-based regime. Most guidance issued at present on fire safety matters is non-statutory, though courts will take any relevant guidance into account when deciding whether or not an offence has been committed under fire safety legislation. Any form of statutory guidance where a failure to comply would constitute an offence would not appear to sit well with the goal-based regime since one of the main aims is that the responsible person may choose from a number of solutions. There would be a consequent difficulty in deciding whether or not he or she had complied with the guidance.

We would welcome views on the guidance that should accompany the proposed Order. In particular, who should it be aimed at and what form should it take? We welcome views on whether any part of the guidance issued under the proposed Order should have some form of legal status.

Licensing

- 4.101 If the scope of the regime is to be as wide as we propose and we are to meet our aim of reducing overlap with other legislation, we need to examine how the reformed law will work alongside other major regulatory regimes, in particular licensing and housing.
- 4.102 The benefits of the reform of fire safety legislation should be seen most clearly in respect of licensed premises. For instance, under the law as it stands, the operator of a hotel has to apply for a fire certificate (for which he has to pay the administrative costs). The precautions set out in the certificate are prescribed by the fire authority and cover all the occupants, both staff and guests. Under the Workplace Fire Regulations he also has to carry out a risk assessment identifying fire risks, and provide the appropriate precautions to ensure the safety of his employees only (while taking account of others using the premises). These regulations are also enforced by the fire authority. He may also have to apply for licences for drinking or gaming etc and these will contain conditions relating to fire safety. Here, the enforcing authority will be the licensing authority, who have to consult the fire authority but can impose entirely different fire safety requirements. A licensee may even have to apply to different licensing authorities for different forms of licence.

- 4.103 The aim of the reform has to be to make life simpler for people responsible for licensed premises without reducing the level of fire safety. For any premises there should be a single fire safety regime, and if we are to continue to meet the UK's obligations under the Workplace and Framework Directives that regime must be based on a risk assessment prepared by the employer where there is one. Under our proposals, the employer, or other responsible person in licensed premises, will need to make a risk assessment taking account of the safety from fire of everyone on the premises and in the vicinity.
- 4.104 We see no reason why that single fire safety regime could not be incorporated into the licensing arrangements. We fully recognise the importance of ensuring that we do not lose the flexibility of the current arrangements whereby licensing officers can make decisions on fire safety based on their knowledge of a particular building and all the safety considerations which need to be taken into account. We should also continue to make use of the fire safety expertise of many licensing officers. Effective consultation between fire authorities and licensing authorities will be crucial.
- 4.105 We propose that licences should no longer contain conditions setting out specific fire safety requirements. Instead, there should be a general condition requiring compliance with the new Fire Safety Order. (The licence would, of course contain conditions dealing with other aspects of safety.) The *fire safety* law will be enforced by the fire authority, but we would expect the fire authority, before agreeing the risk assessment, to take into account other linked risks that may be drawn to their attention by the licensing authority as part of a statutory consultation process. It will be necessary for the risk assessment to be recorded regardless of the number of employees. The fire authority would also be required to draw the attention of the licensing authority to any relevant information. The fire authority would be required to consult the licensing authority before taking any enforcement action (though, as now, failure to do so would not invalidate the enforcement action). Fire authorities would still be able to prohibit or restrict the use of premises if circumstances so demanded without consultation. Any action taken by the fire authority in respect of a breach resulting in a prosecution under fire legislation should automatically count as grounds for endorsement, revocation or refusal, whichever is appropriate, and enforcement action should be taken into account on re-application for a licence.
- 4.106 Because any breach of the fire safety law would constitute a breach of the licence conditions, the licensing authority would be able to take action to address deficiencies in fire precautions by enforcing the licensing law. Where a new problem arose requiring a new fire safety solution, the licensing officer would be able to advise the licensee as to whether, in his opinion, the new solution proposed would still meet the requirements of the fire safety law and thereby meet the conditions of his licence. Licensing officers would thus be able to take decisions in circumstances where it might not be practical to consult a fire safety officer. This would normally apply to short term solutions to counter immediate difficulties. Long term solutions involving significant changes to the risk assessment would normally need to be approved by the fire authority.
- 4.107 In line with our general proposal that where different enforcing authorities have responsibility for a premises, they should consult each other (see paragraphs 5.14 to 5.18), the licensing authority would be required to consult the fire authority on receipt of an application for a licence, and before taking any enforcement action in respect of the condition requiring compliance with the Fire Safety Order. This would not prevent the licensing authority from acting immediately to close premises or prevent an event from taking place if the risks were so serious as to demand such action. Again, this would be done by using their powers under licensing laws.

- 4.108 The Department For Culture, Media and Sport (DCMS) has developed proposals for a comprehensive reform of the main licensing laws (in respect of alcohol and public entertainment). The White paper, *Time For Reform: Proposals for the Modernisation of our Licensing Laws* published in April 2000, sets out the new framework for licensing in England and Wales. The proposed new licensing regime would introduce a system of personal licences and premises licences. The personal licence will allow qualified individuals to manage any establishment selling alcohol. Each such establishment must be subject to a premises licence which will incorporate operating conditions including some relating to safety.
- 4.109 We believe that our proposals for the reform of fire safety law are consistent with the DCMS proposals on licensing. Under these proposals, the personal licence holder is normally legally responsible for meeting the conditions of the premises licence. This gives rise to a complication in that the safety and health Directives require that, where there is an employer, that person should be responsible for the health and safety of their workers. The problem therefore arises when the personal licence holder is not the employer. However, the Directives also require the employer to nominate persons to implement necessary fire safety measures. Consequently, we believe that this apparent problem would be overcome if the personal licence holder was appointed by the employer to be responsible for ensuring compliance with the provisions of the Fire Safety Order. The ultimate responsibility would have to rest with the employer.

We would welcome views on our proposals as to how the new Order will work alongside licensing regimes, and in particular whether they would help maintain necessary protections, strike a fair balance between the interests of those affected and the public interest, and would help make the proposed new regime desirable as a whole. Any comments on these elements will be passed to DCMS.

Application of the Reformed Law to Housing

- 4.110 We have already said that the reformed fire safety law will not apply to single private dwellings. The Government has already published proposals for the new Housing Health and Safety Rating System and the licensing of houses in multiple occupation. We believe that standards of safety in the home should continue to be governed by housing law. Housing authorities should continue to be the primary enforcing authority for houses in multiple occupation but fire authorities should continue to play a key role in providing advice to housing authorities, particularly on fire precautions in licensed HMOs.
- 4.111 There will, however be some provisions of the new Order which will apply to some parts of residential accommodation in order to ensure that we:
- (i) continue to meet our European obligations;
 - (ii) leave in place the necessary protection given by the powers that the fire authorities already have; and
 - (iii) provide for the maintenance of common fire protection systems, including those provided for the use and protection of the fire service.

- 4.112 Consequently, we propose to provide for the following in respect of residential properties:
- Where someone is employed (such as a cleaner or caretaker), the regime should apply in full to the protection of employees taking into account other persons who may be present. This does not apply to domestic premises.
 - Where someone is employed, the requirements for safety of other persons in the place should apply insofar as the nature of the employment concerned itself reasonably infers a duty of care to others (e.g. some forms of sheltered housing).
 - Employers and landlords should be responsible for the maintenance and testing of common fire precautions (including those provided for use by the fire service) regardless of the legislative route used to require their installation.
- 4.113 Fire safety law should not apply to the domestic living accommodation of housing (domestic premises, flats, private rooms in HMOs etc).
- 4.114 Fire authorities should continue to exercise the ability to prohibit or restrict the use of a place (as is currently provided by section 10 of the Fire Precautions Act) where there is a serious risk to persons in the case of fire. However, we propose that in the case of housing, this should be subject to a requirement that, where practicable, the housing authority are informed of the fire authority's intentions before a notice is served (though we propose to retain the element providing that a failure to do so would not invalidate the notice).

We would welcome views on our proposals as to how the new Order will work alongside housing law, and in particular whether they would help maintain necessary protections, strike a fair balance between the interests of those affected and the public interest and would help make the proposed new regime desirable as a whole.

Protection of animals

- 4.115 Various Acts exist which serve to ensure the protection and welfare of animals. Some include precautions to be put into place and measures to be taken to ensure their safety in case of fire, although in the main, the safety of people (employees and the public) is the primary aim. The general principles of animal welfare are set out in the Protection of Animals Act 1911.
- 4.116 The Department for Environment, Food and Rural Affairs recently consulted on the issue of whether to introduce an Animal Welfare Bill to consolidate, modernise and improve legislation currently in existence. The review is in regard to legislation which may apply to animals kept for enjoyment, sport, companionship or farming purposes (some of which is covered by EU regulations as well as by the Protection of Animals Act). Separate consultations are underway in respect of the Dangerous Wild Animals Act and also in implementing the Zoos Directive.
- 4.117 We have considered whether our fire safety regime should apply across the broad range of animal establishments including some smaller enterprises which are actually operated from private homes. If provision were to be made for power of entry for inspecting fire officers for premises such as boarding establishments, this would, in some cases, give authority for entry into domestic properties. This is something we believe should be avoided for enforcement purposes.

4.118 We therefore propose to retain the existing arrangements in respect of fire safety *for animals*. We shall not make provision within the proposed Order for power of entry for fire authorities for domestic properties which may be being used for the purposes of animal welfare. The regime for the life safety of animals should remain as it is now in general terms with provision for the fire authorities to be consultees. Our new regime *will* apply to non-domestic animal establishments in respect of the protection of people.

We would welcome views on our proposals in respect of the protection of animals, and in particular whether they would help maintain necessary protections, strike a fair balance between the interests of those affected and the public interest and would help make the proposed new regime desirable as a whole.

CHAPTER 5:

The Proposals: Enforcement

Who will enforce the new Fire Safety Order?

- 5.1 We believe that, in the majority of cases, the fire authority should be the primary enforcing authority for the proposed Order. There are, however, some areas where it would be more appropriate for other bodies to take the lead. We have in mind nuclear installations and ships under construction or repair for which the Health and Safety Executive would be the appropriate enforcing authority. We also expect the Ministry of Defence's fire service to be the enforcing authority for places used by the armed forces of the Crown, visiting forces and international headquarters or defence organisations designated for the purposes of the International Headquarters and Defence Organisations Act 1964.
- 5.2 In the case of premises subject to safety certification under the Safety of Places of Sport Act 1975 and the Fire Safety and Safety of Places of Sport Act 1987, we propose that the local authority responsible for the issue of the safety certificate be the enforcing authority. This work is carried out by a committee on which the fire authority sits.

We would welcome views as to the appropriate enforcing authorities for the new Order.

Crown immunity

- 5.3 Both the Fire Precautions Act and the Fire Precautions (Workplace) Regulations apply, to a limited extent, to premises occupied by the Crown or owned by the Crown but not occupied by it. The Crown is immune from prosecution under fire safety legislation. The Government is considering its position on the question of Crown immunity. We believe that, whatever conclusion is reached, there needs to be consistency of application to the Crown across health and safety law and fire safety legislation. For that reason, we do not believe that we should attempt to address the question of Crown immunity separately in this reform.
- 5.4 Our intention, therefore, is to maintain the status quo in respect of fire safety legislation. We could, however, allow for flexibility in the future by identifying parts of the proposed Order as subordinate, which would allow us to amend them subsequently by either negative or affirmative resolution order.
- 5.5 In the meantime, we propose that the Crown Premises Inspection Group of HM Fire Service Inspectorate would enforce the proposed Order in relation to:
- (i) premises owned or occupied by the Crown;
 - (ii) the Houses of Parliament;
 - (iii) the United Kingdom Atomic Energy Authority.

- 5.6 It would be possible under the proposed Order for the Secretary of State to authorise other persons or bodies to enforce the requirements if he considers it appropriate. This reproduces an existing provision in the Fire Precautions Act.

We would welcome views on our proposal that the question of Crown immunity should not be addressed separately in this reform. We would also welcome views on whether the proposed flexibility, and on whether the negative resolution mechanism would be the appropriate vehicle for extending the fire safety regime to cover premises currently subject to Crown immunity. We would also welcome views on which other elements of the proposed fire safety regime would benefit from future flexibility over and above the proposal to re-state the regulation-making power in the Fire Precautions Act.

How will the Order be enforced?

- 5.7 Enforcing authorities will be under a duty to enforce the new Fire Safety Order. But the new regime is based on the principle that employers and people responsible for activities giving rise to risk have the responsibility for the fire safety of their premises and the people who use them. So enforcing authorities will need to enforce the new legislation in a way which reflects that principle.
- 5.8 Where the enforcing authority are not satisfied that the fire precautions are adequate, rather than stipulate exactly what the responsible person must do, it will be for the enforcing authority to advise him or her where the law has not been complied with, why they are of that opinion and, where necessary, require them to take action. This is in line with existing health and safety law.
- 5.9 We expect enforcing authorities to enforce the law in accordance with the Cabinet Office's *Enforcement Concordat*. It is also open to Ministers, under section 9 of the Regulatory Reform Act, to issue a code of practice to be followed by enforcing officers. Failure to comply with such a code could be taken into account by a court in determining whether a person has failed to comply with any provision of the proposed Order. We expect that most minor breaches could be dealt with through informal action such as verbal or written advice without the need to serve a formal notice. Where the breach of the law is more serious, or where informal action has not been effective, the enforcing authority might then issue a formal enforcement notice which explains how the law has been breached. The authority might (though it would not be obliged to) add a schedule to the notice setting out means by which the contravention could be rectified. The schedule would acknowledge that the responsible person may choose a reasonable alternative method of achieving compliance. The following paragraphs set out the proposed procedures relating to enforcement notices.

ENFORCEMENT NOTICES

- 5.10 If the enforcing authority are of the opinion that the responsible person has failed to comply with any provision of the Order or of any regulations made under it, the authority may serve on that person a notice, referred to as "an enforcement notice".

- 5.11 An enforcement notice would –
- (a) state that the enforcing authority are of the opinion that the responsible person has failed to comply with the Order and why;
 - (b) specify the provisions which have not been complied with; and
 - (c) require that person either –
 - to take steps to remedy the failure within such period from the date of service of the notice (not being less than 28 days) as may be specified in the notice; or
 - to send to the enforcing authority, within such period from the date of service of the notice as they may specify, a copy of the risk assessment and a summary of the proposed changes to the fire precautions.
- 5.12 An enforcement notice might (but need not) specify the steps which the enforcing authority consider are necessary to remedy the failure. Where any such steps are specified the person on whom the notice is served need not follow those steps but, if he or she does not, the specified steps might be taken into account by a court in any proceedings for a failure to comply with the enforcement notice.
- 5.13 Where an enforcing authority are of the opinion that a person's failure to comply with the Order also extends to a workplace outside their area, the enforcement notice may include requirements concerning that workplace. Before including any such requirements the authority shall consult the enforcing authority for the area in which the workplace is situated.

CONSULTATION

- 5.14 We consider it essential to the interests of business that statutory authorities enforcing different areas of legislation in the same premises should consult effectively with one another. These should include the authority enforcing the new Fire Safety Order, the planning authority, building control bodies, housing authorities, environmental health officers, the Health and Safety Executive, licensing authorities and those responsible for heritage preservation. We propose that where a Government Department or other authority intends to take any action in respect of premises which would affect any of the measures required by the Order, they should consult the enforcing authority before taking that action. Failure to do so would not invalidate the action taken.
- 5.15 We consider it would be appropriate for an enforcing authority, when consulted by another authority, to advise not only whether they are content with proposals under the legislation the consulting authority is responsible for, but also of any additional precautions that might be necessary given the likely use of the premises and information about that use. For instance, fire authorities, when consulted on applications under building control legislation, could advise on the precautions which would be required given the likely use of the building. This would allow prospective users to consider risks that may arise and consider their plans and arrangements at the earliest possible stage and amend them where necessary.

- 5.16 Under the proposed Order there would be no statutory bar preventing enforcing authorities from requiring additional work following Building Regulations approval. To have a statutory provision which prevented the re-assessment of fire precautions following Building Regulations approval would not be consistent with our obligations under the European Framework and Workplace Directives. Moreover, the idea behind such a provision, that the fire precautions in a building could be fixed at a particular point in time, would be wholly inconsistent with the concept of fire precautions based on dynamic risk assessment.
- 5.17 We propose that before serving an enforcement notice which would oblige a person to make an alteration to a building or structure, the enforcing authority should consult –
- (a) in cases where the local authority is not the enforcing authority, the local authority for the area in which the premises are situated;
 - (b) any enforcing authority which has responsibility under the Health and Safety at Work etc Act 1974 for premises used as a workplace;
 - (c) in the case of a building or structure in relation to which an initial notice given under section 47 of the Building Act 1984 is in force, the approved inspector who gave that initial notice;
 - (d) in the case of premises which is, includes or forms part of a designated sports ground or a sports ground at which there is a regulated stand, the local authority;
 - (e) any other person whose consent to the alteration would be required by or under any enactment.
- 5.18 Without prejudice to the power of the court to cancel or modify an enforcement notice, no failure on the part of a fire authority to consult would make an enforcement notice void.
- 5.19 Where an enforcement notice has been served the enforcing authority might withdraw the notice at any time before the end of the period specified in the notice, and if an appeal against the notice is not pending, the enforcing authority may extend or further extend the period specified in the notice.
- 5.20 It needs to be stressed that the purpose of enforcement is to deal with failures to comply with the law, to address risks and fire precautions which may have become inadequate due to changes in circumstances or changes in the level of risk. It is not intended that the enforcing authority should be able to take action in order to upgrade fire precautions which continue to address adequately the existing risks simply because the standards for such equipment have changed through technological advance. Guidance will be provided to enforcing authorities accordingly.
- 5.21 Our proposals for enforcement notices impose a new burden in that the responsible person will be expected to determine how to comply with the law once faced with a notice. They do not remove necessary protection and, if anything, enhance the responsible person's freedom of choice in deciding how to provide for fire safety. Consequently we think they strike a fair balance and are proportionate to the benefit gained since the regime as a whole is easier to understand. We believe that this helps make the proposed new regime desirable as a whole.

We would welcome views on our proposals for the form of enforcement notices, and whether Ministers should issue a code of practice for enforcing officers.

ALTERATIONS NOTICES

- 5.22 We wish the enforcing authority to have the discretion to require the responsible person to submit the risk assessment and proposed fire safety measures to the authority before implementing them. This draws on an existing provision in the Fire Precautions Act. The responsible person would be able to appeal against the imposition of this requirement.
- 5.23 This procedure should be available for use at the discretion of the enforcing authority. We envisage that it would be used either where the law has not been complied with but formal enforcement action is not appropriate, or where the enforcing authority take the view that a future change of circumstances could result in increased risk to people using the premises. The relevant notices will be referred to as “alterations notices”. The following paragraphs set out the proposed procedures.
- 5.24 We propose that the enforcing authority may serve on the responsible person a notice referred to as an “alterations notice”. Where an alterations notice is in force, the responsible person would have to record the significant findings of the risk assessment. Before making any changes to the premises or to the use of the premises which may result in a significant increase in risk, he or she should –
- (a) notify the enforcing authority of the proposed changes; and
 - (b) send the enforcing authority a copy of the risk assessment and a summary of the proposed changes to the existing fire precautions.
- 5.25 Where this information has been provided to the enforcing authority, the responsible person would not be able to make any changes to the existing fire precautions until the authority has confirmed in writing that it has considered the risk assessment and summary of changes.
- 5.26 Where an alterations notice is in force in relation to licensed premises, the enforcing authority should consult the licensing authority for those premises, in respect of any information sent to the enforcing authority.
- 5.27 An alterations notice might be withdrawn at any time and the notice would be deemed to be in force until such time as it is withdrawn or cancelled by the court.
- 5.28 We believe that these proposals would be fair to businesses as it would prevent them from carrying out possibly expensive work which might not meet the requirements of the law. They are desirable in providing enforcing authorities with a tool to ensure that they can monitor the fire safety measures provided in premises which they consider to present particular risks. It could be said that the responsible person’s right to provide fire precautions immediately would be restricted but this would be balanced against the possibility that he would be prevented from spending money unnecessarily. The benefit gained would be proportionate as the enforcing authority would be targeting its efforts at premises which it thought presented the greatest risk, and in our view this helps make the proposed new regime desirable as a whole.

We would welcome views on our proposals in respect of alterations notices. Should the enforcing authority be required to approve risk assessments within a certain time? Do the proposals meet the requirements of proportionality, fair balance and desirability?

PROHIBITION NOTICES

- 5.29 We propose that, as in existing law, the fire authority should have the power to issue a notice restricting or prohibiting the use of a place if they are of the opinion that it poses a serious risk of death or injury. The following paragraphs set out the relevant procedures. These are based on the existing provisions of the Fire Precautions Act which have wide application.
- 5.30 We propose that if the enforcing authority are of the opinion that use of premises to which the Order applies involves or will involve a risk to persons on the premises in case of fire so serious that use of the premises ought to be prohibited or restricted, the authority may serve on the responsible person a notice referred to as “a prohibition notice”.
- 5.31 The matters relevant to this assessment of the risk to persons in case of fire include anything affecting their escape from the premises in that event.
- 5.32 A prohibition notice should:
- (a) state that use of premises involves or will involve a risk to persons on the premises in case of fire so serious that use of the premises ought to be prohibited or restricted;
 - (b) specify the matters which in their opinion give or, as the case may be, will give rise to that risk; and
 - (c) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the specified matters have been remedied.
- 5.33 A prohibition notice might include directions as to the steps which will have to be taken to remedy the matters specified in the notice. A prohibition or restriction contained in a prohibition notice should take effect immediately it is served if the authority are of the opinion, and so state in the notice, that the risk of serious personal injury is or will be imminent, and in any other case should take effect at the end of a period specified in the prohibition notice. The enforcing authority may withdraw the notice at any time.
- 5.34 The proposals for prohibition notices remove no rights, freedoms or necessary protection. They re-state existing burdens and provide a necessary safeguard. They are proportionate in that enforcing authorities would only use them in the most serious cases where action would be necessary to prevent loss of life. As such they clearly strike a fair balance between the interest of the responsible person and the public, and we believe they help make the proposed new regime desirable overall.

We would welcome views on the proposals for prohibition notices.

POWERS OF INSPECTORS

- 5.35 The new Fire Safety Order will reproduce the provisions of the Fire Precautions Act which provide the relevant powers for enforcing officers. These are set out in the following paragraphs.
- 5.36 Inspecting officers under the Order would be defined as they are in the Fire Precautions Act. So “fire inspector” would mean an inspector or assistant inspector appointed under section 24 of the Fire Services Act 1947. Every enforcing authority would also appoint inspectors to enforce the provisions of the Order. An inspector would be able to do anything necessary to ensure that the Order and regulations made under it are complied with. In particular, he or she would have power to do at any reasonable time the following:
- (a) to enter any premises which the inspector has reason to believe it is necessary to enter for the purpose mentioned above and to inspect the whole or part of the premises and anything in them;
 - (b) to make such inquiry as may be necessary for any of the following purposes:
 - to ascertain, as regards the premises, whether the provisions of the Order or any regulations made under it apply or have been complied with; and
 - to identify the responsible person for the premises;
 - (c) to require the production of, inspect, and take copies of or of any entry in:
 - any books or documents which are required to be kept under the Order or regulations made under it; and
 - any other books or documents which it is necessary for him to see for the purposes of any inspection or inquiry;
 - (d) to require any person having responsibilities in relation to any premises to which the Order applies (whether or not the responsible person) to give him such facilities and assistance as are necessary for the purpose of enabling the inspector to exercise any of these powers;
- 5.37 An inspector should, if so required when visiting any premises in the exercise of these powers, produce to the occupier of the premises some duly authenticated document showing his authority.
- 5.38 In the case of premises used as a dwelling no power of entry shall be exercised as of right unless 24 hours’ notice has been given to the occupier. “Dwelling” in this sense includes premises used as sleeping accommodation including hotels to which the proposed Order would apply.

EXERCISE ON BEHALF OF FIRE INSPECTORS OF THEIR POWERS BY OFFICERS OF FIRE BRIGADES

- 5.39 We propose that fire inspectors should be able to authorise in writing an officer of the fire brigade maintained by the fire authority to exercise the powers of an inspector for the purpose of reporting to him on any matter falling within his duties under the Order. A fire inspector would not be able to authorise an officer of a fire brigade to act in this way except with the consent of the fire authority who maintain that brigade.
- 5.40 The proposals in respect of the powers of inspectors and fire inspectors re-state existing burdens. They provide no more than is necessary for inspectors to enforce fire safety law effectively and as such are proportionate. If we were not to re-state these provisions we would be removing a necessary protection. We do not consider that any rights or freedoms are at issue that people could reasonably expect to continue to exercise. As such they clearly strike a fair balance between the interest of the responsible person and the public, and we believe they help make the proposed new regime desirable overall.

We would welcome views on the proposed powers of inspectors in respect of the enforcement of fire safety legislation (proposed new powers are covered in paragraphs 6.1 to 6.7).

OFFENCES

- 5.41 The following would be offences under the proposed Order –
- (a) to fail to comply with any of the fire safety duties;
 - (b) to fail to comply with any requirement or prohibition imposed by regulations made under the Order;
 - (c) to fail to comply with any requirement imposed by an alterations notice;
 - (d) to fail to comply with any requirement imposed by an enforcement notice;
 - (e) to fail to comply with any prohibition or restriction imposed by a prohibition notice;
 - (f) to fail to comply with the general duties of employees at work;
 - (g) for a person to make in any register, book, notice or other document required to be kept, served or given by or by virtue of regulations made under the Order, an entry which he knows to be false in a material particular;
 - (h) for a person to give any information which he knows to be false in a material particular or recklessly to give any false information in response to any inquiry made by an inspector;
 - (i) to obstruct, intentionally, an inspector in the exercise or performance of his powers or duties under the Order;

- (j) to fail, without reasonable excuse, to comply with any requirements imposed by an inspector; or
- (k) to pretend, with intent to deceive, to be an inspector.
- 5.42 The penalty for conviction of offences (a) to (e) would be, on summary conviction, a fine not exceeding the statutory maximum (currently £5,000). On conviction on indictment the penalty would be a fine or imprisonment for a term not exceeding two years, or both. For (f) it would be a fine not exceeding the statutory maximum or, on conviction on indictment, a fine. For (g), (h) or (i) the penalty would be a fine not exceeding level 5 on the standard scale (currently £5,000). For (j) or (k) the penalty would be a fine not exceeding level 3 on the standard scale (currently £1,000).
- 5.43 Where an offence under the Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate would be guilty of that offence, and would be liable to be proceeded against and punished accordingly. Where the affairs of a body corporate are managed by its members, an act or default by any member in connection with his or her functions of management would be treated as if he or she were a director of the body corporate.
- 5.44 Where the commission by any person of an offence under the Order, is due to the act or default of some other person, that other person would be guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.
- 5.45 Nothing in the proposed Order should operate so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of –
- his or her employee; or
 - a person appointed to assist the employer to meet the requirements of the Order.
- 5.46 We propose that, in respect of the offences described in paragraph 5.41 (g) and (h), it would be a defence of the person charged to prove that he or she had taken all reasonable precautions and exercised all due diligence to avoid committing the offence.
- 5.47 We also propose that where, in any provision of the proposed Order, a person is required to do something *so far as it is reasonably practicable*, then, in any proceedings for an offence under any of those provisions, it would be for the accused to prove that it was not practicable to do more than was in fact done. This brings fire safety law in line with health and safety law.
- 5.48 We believe that these proposed offences are necessary to underpin the proposed new risk based fire safety system. As such, they form part of the necessary protections for those at risk and are proportionate. We do not consider that any rights or freedoms are at issue that people could reasonably expect to continue to exercise, that they clearly strike a fair balance between the interest of the responsible person and the public. We believe they help make the proposed new regime desirable overall.

We would welcome views on the proposed offences under the new Order.

Civil Liability

- 5.49 If a breach of a duty imposed on an employer by the proposed order causes damage to an employee, a right of action will be conferred on the employee. Nothing else in the Order confers a right of action in any civil proceedings. This is a proposed addition to the workplace fire precautions legislation on which the Health and Safety Executive consulted recently³. We propose that it be re-stated in the Order.

Consistency

- 5.50 We think it important to address the issue of consistency of enforcement. The proposed Order would be backed by guidance for the use of both responsible persons and the fire authorities, and inspecting officers will be required to have due regard to that guidance. Nevertheless, it is inevitable that not all inspecting officers will think exactly alike. We propose that all inspecting officers should be required to prepare a report of any inspection they carry out under the Order and to make it available to the responsible person on request. The report should contain an explanation of the basis on which the inspector has agreed to the risk assessment and the fire precautions which have been provided in the building. Any officer inspecting the premises subsequently should be obliged to refer to previous inspection reports before commencing any form of enforcement action. It would be for him to justify any departure from the approach taken by the previous inspector. This would not override the power to prohibit or restrict the use of the premises in the case of immediate danger.
- 5.51 We think these proposals strike a fair balance between the interests of responsible persons and enforcing authorities. They are proportionate in that they do not place unacceptable burdens on inspectors since they normally prepare reports of inspections in any case. There is little additional burden in making them available to responsible persons and significant benefit through greater clarity. Nevertheless, we believe that the requirement to produce reports would form part of the systems of protections under the proposed new risk based fire safety system, and as such is proportionate. We do not consider that any rights or freedoms are at issue that people could reasonably expect to continue to exercise, and that it clearly strikes a fair balance between the interest of the responsible person and the public. We believe it helps make the proposed new regime desirable overall.

We would welcome views on our proposals for requiring inspectors to prepare reports of inspections.

Appeals

- 5.52 We considered carefully the question of the appropriate mechanism for appeals against enforcement notices, prohibition/restriction notices and decisions of the enforcing authority. In particular, we examined the possibility of independent appeal boards and tribunals. We took into account the consultation exercises associated with the Fire Precautions (Workplace) Regulations 1997 and the 1999 amendment Regulations, neither of which indicated a strong preference for a change to the existing mechanism of appeal to the magistrates' courts. In the three years up to 2000 there were only six appeals, with other difficulties being resolved in accordance with the *Enforcement Concordat*. We

³ HSE Consultation Document CD177

concluded that the existing arrangements worked well. To maintain them would present the least change to those subject to the system, and would be most cost-effective since there would be no need to create additional bureaucracy. We therefore propose that appeals should continue to go to the magistrates' courts. The details of the proposed appeals procedures are set out in the following paragraphs.

- 5.53 A person on whom an alterations notice, an enforcement notice or a prohibition notice is served would be able, within 21 days from the day on which the notice is served, to appeal to the magistrates' court. The court would either cancel or affirm the notice, and if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.
- 5.54 Where an appeal is brought against an alterations notice or an enforcement notice, the bringing of the appeal would have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.
- 5.55 Where an appeal is brought against a prohibition notice, the bringing of the appeal would not have the effect of suspending the operation of the notice, unless, on the application of the appellant, the court so directs (and then only from the giving of the direction).
- 5.56 A person aggrieved by an order made by a magistrates' court on determining a complaint under the Order would be able to appeal to the Crown Court.
- 5.57 An appeals system will create legal requirements for the appellant and the fire authority. We believe that an effective appeals system would form a key protection under the proposed new risk based fire safety system, and as such is proportionate. We consider that it helps safeguard people's rights or freedoms under the new system, and that it will help ensure that the administration of the new fire safety regime strikes a fair balance between the interest of the responsible person and the public. We believe it helps make the proposed new regime desirable overall.

We would welcome views on our proposals in respect of appeals, and in particular whether the magistrates' court remains the proper avenue of appeal.

Validation of Fire Safety Solutions: the Question of Public Reassurance

- 5.58 *Fire Safety Legislation for the Future* envisaged that there might be some form of formal validation procedure for high risk premises. It was felt that something of this nature might be required to provide the public with the kind of reassurance which is currently offered by the certification process. One of the problems with such an approach is that it gives rise to the question of how one defines "high risk". We believe that it is not practicable to incorporate a definition in the law which would be sufficiently comprehensive and robust as to capture all those premises which might give rise to concern. We feel that one of the fundamental advantages of the reform is that fire authorities will be freed to apply their resources to the inspection of premises which they consider, on the basis of their local knowledge, and with the assistance of guidance issued by the Secretary of State, to present the most risk. We are not proposing that the plans should be approved by the Secretary of State.

- 5.59 To reinforce this approach we propose that there should be a duty on the enforcing authority to institute, develop and maintain an enforcement programme which would include details of how the authority might determine the frequency with which it will inspect premises to which the Order applies in order to monitor and encourage compliance with the law. In developing such a programme the authority would have to take into account all the information available about the use and associated fire risks in the premises in its area.
- 5.60 Such a requirement would make it sufficiently clear that inspection is an integral element of the enforcement process while leaving the actual decision as to the frequency of inspection at the discretion of the enforcing authority.
- 5.61 We believe that the requirement to prepare an enforcement programme would form part of the systems of protections under the proposed new risk based fire safety system, and as such is proportionate. We do not consider that it would affect any rights or freedoms that people or the fire authority could reasonably expect to continue to exercise. In our view, it should strike a fair balance between the interest of those affected and the public interest. We believe it helps make the proposed new regime desirable overall.

We would welcome views on our proposals for a duty to institute, develop and maintain an enforcement programme. We should be interested to know if consultees think the programme should be published.

Reassurance to the public

- 5.62 We have considered very carefully the question of public reassurance and the implications of removing the requirement for fire certificates. We need to ask, what is it about the existing arrangements which give the public this sense of assurance? We believe that this centres on enforcement by the fire service – on the knowledge that the fire service has inspected the premises, examined the fire precautions and declared themselves satisfied. The fire service will, of course, continue to do this.
- 5.63 The fact that the responsible person will be responsible for carrying out the risk assessment does not free him to provide fire precautions to a lower standard than existed before. The new regime is goal based and, as we have explained, the law will set out the goals very clearly as specific requirements. The responsible person can determine how the goals may be achieved, but it will be for the enforcing authority, in enforcing the law, to assess whether he or she has done so. Effective enforcement is therefore key to the whole process and this underlines the importance of the authority being seen to have an enforcement programme which targets its inspections on the basis of risk.

We would welcome views as to whether our proposals will offer sufficient reassurance to the public as to their safety from fire.

Charging

- 5.64 In *Fire Safety Legislation for the Future* we considered whether there might be circumstances where the fire authority should be able to charge for providing advice. At present, the advice given on request under section 1(1)(f) of the Fire Services Act 1947 has to be provided free of charge. Many fire authorities favour this on the grounds that a charge

would deter people from seeking advice, to the detriment of fire safety. Charging would also seem to be inconsistent with the risk assessment-based approach and the principles of the *Enforcement Concordat*.

- 5.65 On the other hand, businesses may on occasion turn to fire authorities for specialist advice because it is free rather than pay fees to consultants. In some cases, fire authorities find themselves allocating fire safety professionals to work full time on a major development with no legal power to charge for this service. We had difficulty, however, in arriving at a clear distinction between the giving of advice and the fulfilment of a statutory duty as a consultee. In any case, both would remain statutory duties. On balance, therefore, we concluded that fire authorities should not be able to charge for any services related to fire safety.

We would welcome views as to whether fire authorities should be able to charge for advice or for any other service provided in relation to fire safety. Any charge would represent a burden and would have to meet the requirements of proportionality, fair balance and desirability, and we would welcome your views on those specific issues if you think that fire authorities should be able to charge for advice or other services.

CHAPTER 6:

The Proposals:

New Powers and Duties

Power to investigate fires

- 6.1 Current legislation contains no power authorising fire officers investigating the causes of a fire to enter domestic premises where a fire has occurred without the consent of the owner or occupier. Where a fire has resulted in loss of life or serious and extensive damage to property it is essential that fire officers are able to enter the premises concerned as quickly as possible after the event, so that a detailed investigation can be made of the relevant circumstances. Fire officers already have the power to enter premises covered by fire safety legislation and, after a fire, we would expect them to do so to ascertain whether an offence has been committed. We simply wish to provide that, in a similar way, they may enter domestic premises to investigate the causes of a fire.
- 6.2 We therefore propose that the Order should include a simple power to investigate the cause of a fire or why it spread which, when linked to the proposed offence provision of obstructing an officer of the enforcing authority, will provide fire authorities with appropriate and necessary powers for fire investigation purposes.
- 6.3 We think it desirable that fire authorities should be able to investigate any fire as part of the system of necessary protections. Even where there has been no serious loss there may be lessons to be learned which could impact on future public safety such as those in respect of faulty equipment, the performance of fire protection measures and the reasons why any fire protection measures might have failed. This is not a power of forcible entry because we also propose that an investigating officer might be refused entry if there are reasonable grounds for doing so. It should, when necessary, be for the courts to determine the reasonableness of any refusal. The power is therefore considered proportionate and to add to the overall desirability of the Order. Considering the benefits to be gained, we believe the proposal strikes a fair balance between those affected and the public, and would not prevent any person from continuing to exercise any right or freedom that he or she might reasonably expect to continue to exercise.

Power to take samples

- 6.4 Similarly, fire authorities currently have no power to take away items or samples of substances for analysis, either in connection with the enforcement of fire safety legislation or in the course of fire investigations. An officer enforcing fire safety legislation may wish to test a substance or article to ascertain its fire resistance or flammability. Such a power would also be useful to a fire safety officer who needs to determine whether dangerous materials are being stored on a site which is subject to fire safety legislation. The power could also require production of any test certificates. Such provision – when linked to the proposed offence provision of obstructing an officer of the fire authority – would provide enforcing authorities with appropriate and necessary powers.

- 6.5 It may also be essential for a fire officer, investigating the cause of a fire, to be able to remove items for examination, and possibly to test them as outlined above.
- 6.6 An inspector shall, if so required when visiting any premises in the exercise of these proposed powers, produce to the occupier of the premises some duly authenticated document showing his authority.
- 6.7 What we are proposing is not a power of seizure because we also propose that an investigating officer might be refused permission to remove an item or sample if there are reasonable grounds for doing so. It should, where necessary, be for the courts to determine the reasonableness of any refusal. In respect of enforcement we wish to provide proportionate powers which would allow an enforcing officer to ascertain whether the proposed Order is being complied with. The proposals in respect of fire investigation form part of the proposed system of necessary protection, and would not prevent any person from continuing to exercise any right or freedom that he or she might reasonably expect to continue to exercise. We consider that it strikes a fair balance in that the householder or responsible person would not be required to do anything unreasonable and there are clearly identifiable benefits in terms of fire safety.

We would welcome views on our proposed new powers for fire authorities to investigate fires and to take away articles and substances.

Community fire safety

- 6.8 While the majority of our proposals relate to premises which are subject to fire safety legislation, and we have no intention of extending this legislation to private homes, we wish to take the opportunity to clarify the fire service's role in contributing to the Government's objective of reducing fire deaths in the home.
- 6.9 We believe that the majority of domestic fires are preventable. They are mostly a result of a lack of care or inappropriate behaviour. The deaths and injuries they cause are therefore needless. To prevent them requires only fairly simple steps to be taken by householders and we have seen evidence that attitudes and behaviour can be changed by properly planned and resourced campaigns at the national level and locally by brigades. Such proactive prevention and education efforts have become known as *Community Fire Safety* and an example of its success was the national smoke alarm television campaigns which resulted in their presence in four out of five homes.
- 6.10 Although community fire safety and education is now a cornerstone of fire service work, there is no statutory provision authorising fire authorities to carry it out. We therefore intend to use the new Order to insert a provision in the Fire Services Act 1947 incorporating such a duty. Although nominally a new burden, this is work which fire authorities are already undertaking. We believe it right, however, to recognise the importance of such work by putting it on a proper statutory footing. We therefore intend to add the following to the duties of fire authorities listed in section 1(1) of the Fire Service Act 1947:
- (g) efficient arrangements for providing education, information, publicity and encouragement in respect of the steps to be taken to prevent fires in their area and to prevent the death of, or injury to, any person being caused by such a fire.

- 6.11 We believe that a duty on fire authorities to provide community fire education would form part of the systems of protections under the proposed new risk based fire safety system, and as such is proportionate. We do not consider that it would adversely affect any rights or freedoms that people or the fire authority could reasonably expect to continue to exercise – indeed, we believe that it would enhance them. In our view, such a duty would strike a fair balance between the interests of those affected and the public. We believe it helps make the proposed new regime desirable overall.

We would welcome views on our proposal to introduce a duty on fire authorities to promote community fire safety. Do consultees consider that the absence of a duty is a disincentive to fire brigades to carry out this work?

CHAPTER 7:

Analysis

Re-statement of existing burdens

- 7.1 Many of the requirements contained in the proposed Order re-state existing burdens contained in provisions of the workplace fire precautions legislation. These are the provisions relating to:
- risk assessment
 - the principles of prevention to be applied
 - fire safety arrangements
 - fire fighting and fire detection
 - emergency routes and exits
 - safety assistance
 - procedures for serious and imminent danger and for danger areas
 - provision of information
 - co-operation and co-ordination
 - persons working host employers' or self-employed persons' undertakings
 - capabilities and training
 - general duties of employees at work
- 7.2 All these requirements reflect longstanding health and safety law and, in most cases implement EU legislation. We are aware of no evidence to indicate that they are not proportionate to the safety benefits they bring or that they do not strike a fair balance between the burden they impose on employers and the self-employed and the people they are intended to protect.
- 7.3 Where the provisions have been extended to affect new sectors, or where other new burdens have been created, these have been highlighted in the document. All proposals which constitute additions to existing law are set out in the table at the end of this chapter including reference to the safeguards contained in the Regulatory Reform Act.

Necessary protection

- 7.4 Existing fire safety law provides a level of protection from fire to occupants of premises which are put to certain uses. There is nothing in our proposals for reform which would justify any reduction in the levels of protection already achieved by fire certification, safety certification or other existing legislative provision.

Rights and freedoms

- 7.5 For the most part, our proposals build on existing provision, simplifying and rationalising it to provide a single regime which should be easier to understand than the current range of legislation. There are three proposals which, it might be argued, compromise existing freedoms: the power to enter domestic premises to investigate fires, the power to take away samples for analysis and our proposals in respect of alterations notices. At present, a home owner is free to refuse entry to a fire officer who may wish to investigate the cause of fire in his or her home. We believe it reasonable, in the wider public interest, for a fire officer to be able to investigate the cause of a fire so that it might be established whether an offence (either of arson or under the proposed Order) has been committed, or so that lessons might be learned which might contribute to the safety of others in the future.
- 7.6 The power to take away samples might be exercised either in the course of a fire investigation or by a fire officer enforcing fire safety law. Inspecting officers already have powers to require persons with responsibilities for premises to give them such facilities and assistance as they require, and it is an offence for those persons to fail to do so. Again, at present, a home owner could refuse to allow an item to be taken away for the purposes of an investigation. For the reasons outlined above, we believe it would be appropriate to limit that freedom to circumstances where a home owner could demonstrate that he or she had reasonable grounds to refuse.
- 7.7 The proposals in respect of alterations notices could be said to reduce the responsible person's freedom to provide new fire precautions immediately. Such notices would only be served for good reason and would often be in the interests of the responsible person in that it might prevent him from incurring unnecessary expenditure.

Burdens

EXTENSION OF LEGISLATION TO THE SELF-EMPLOYED AND VOLUNTARY SECTOR

- 7.8 Most of the people to whom fire safety legislation will extend for the first time should already be complying with health and safety legislation. They should already be carrying out risk assessments which should include the assessment of the risk from fire. The burden on them should not, therefore, be significant and consequently is seen as fair on the responsible person and proportionate to the benefit to be gained in terms of a consistent safety regime. We think it desirable that the specific duties on the responsible person in respect of fire should be clarified.

PROTECTION SHOULD BE EXTENDED TO PERSONS WHO MIGHT BE AFFECTED BY A FIRE

- 7.9 Health and safety law already offers protection to people who might be affected by accidents in the workplace. We think there is a desirable benefit in protecting anyone who might be affected by a fire, not just occupants of buildings. We believe that the draft Dangerous Substances and Explosive Atmospheres Regulations on which the Health and Safety Commission recently consulted would go some way to providing such protection since they seek to mitigate the effects of fires involving the most dangerous materials. We propose to extend the duty on the responsible person to mitigate the detrimental effects of a fire to all premises covered by the proposed Order. As fire precautions in most buildings already contain elements aimed at stopping the spread of fire, this should not be a significant new burden and could be considered proportionate.

NEW DUTY TO MAINTAIN THOSE FIRE PRECAUTIONS AND FACILITIES REQUIRED UNDER BUILDING REGULATIONS AND FIRE SAFETY LEGISLATION, INCLUDING THOSE WHICH ARE FOR THE USE AND PROTECTION OF THE FIRE BRIGADE

- 7.10 We consider the imposition of this new burden to be reasonable and proportionate to the problem being addressed. Any measure which enables the fire service to fight fires more efficiently and safely must, we feel, strike a fair balance between those affected and the public. At present, the law provides for the installation in new buildings of facilities specifically for the use and protection of the fire service, but nothing to ensure that they are fit for use when they are needed. It is desirable that this be rectified.

NEW STATUTORY DUTY ON FIRE AUTHORITIES TO PROMOTE COMMUNITY FIRE SAFETY

- 7.11 This should not, in practice, impose a new burden on fire authorities since this is work which they are already undertaking.

Costs and savings

7.12 Details of costs and savings are set out in the regulatory impact assessment at Annex F. The overall costs and benefits are summarised in the table below:

	Benefits	Policy Costs	Implementation Costs
Business (employers)	£1.7 – ending of requirement for fire certificates £6.6 – 33.2m pa – reduction in fires	Preparing risk assessments: £7.5m (= £1.09m pa)	Purchase & reading of guidance: £8m – larger companies – £25.5m – smaller companies (equal to £4.5m pa)
Self-employed	£38.5 – 76.6m – reduction in fires £[to be quantified] reduction in false alarms Clarification and simplification of requirements and responsibilities (to be informed by consultation)	Preparing risk assessments: £970k (£132k pa)	Purchase & reading of guidance: £22.4m (=£3m pa)
Voluntary Sector	£0.55m – £1.1m pa – reduction in fires £[to be quantified] – reduction in false alarms Clarification and simplification of requirements and responsibilities (to be informed by consultation)	Preparing risk assessments: To be quantified on consultation	Purchase & reading of guidance: £570k (=£80k pa)
Fire authorities	£4.2m – £12.5m – reduction in false alarms	–	–

7.13 Details of proposals which add to existing legislation and an explanation of how they meet the safeguards contained in the Regulatory Reform Act are set out in the following table.

TESTS UNDER THE REGULATORY REFORM ACT			
Burdens removed or reduced			
Legislation	Burdens imposed by legislation	Would the proposal remove any necessary protection	Would the proposal prevent anyone exercising a right or freedom
Fire Precautions Act 1971 sections 1 to 8	Requirement to have fire certificate and associated enforcement provisions.	No the protection afforded by the risk based system to be created will afford the protection necessary.	No.
Separate fire safety conditions of licensing regimes	Requirement to comply with separate overlapping requirements imposed by enforcing authority.	No the protection afforded by the risk based system to be created will afford the protection necessary.	No.
Separate fire safety requirements of other legislation	Requirement to comply with separate overlapping requirements imposed by enforcing authority.	No the protection afforded by the risk based system to be created will afford the protection necessary.	No.
TESTS UNDER THE REGULATORY REFORM ACT			
Provision Imposing Burdens to be Re-enacted			
Legislation	Burdens imposed by legislation	Is the burden proportionate to the benefit which is expected to result	
Fire Precautions Act 1971 section 12	Regulation making power in relation to fire precautions.	Yes. The power is intended to allow the regime to adjust to technological developments and to allow duties and responsibilities to be refined to cater for specific circumstances.	
Fire Precautions Act 1971 section 19	Power for enforcing authority to enter and inspect properties other than single private dwellings.	Yes. Re-enactment does not alter existing burdens. Inspection of property is essential to enforcement activity and so the driving down the risk of death injury and damage.	
Fire Precautions Act 1971 section 10	Power for enforcing authority to prohibit or restrict the use of dangerous property.	Yes. The ability of the enforcing authorities to take immediate action to protect the public and workers from serious and imminent danger has undoubtedly prevented death and injuries and will continue to do so.	
Fire Precautions Act 1971 section 18	Duty of fire authority to enforce the 1971 Act.	Yes. Any regime based wholly or partly on self-compliance must be backed by statutory enforcement.	

TESTS UNDER THE REGULATORY REFORM ACT
Proposals introducing burdens

Proposals	Would the proposal impose or remove a burden?	Would the proposal remove any necessary protection?	Would the proposal prevent anyone from exercising a right or freedom?	Would the new burden be proportionate to the benefit?	Would the proposal strike a fair balance between the interests of those affected and the public?	Would the extent to which the order removes or reduces burdens make it desirable for the RRO to be made?
Extend scope of fire safety legislation to self-employed and voluntary sector and require protection of non-employees and those in the vicinity of premises.	A new burden would arise from expected improvements in compliance with existing obligations and duties that the Order will clarify, and explain (or restate in a fire specific context).	No. This would clarify statutory protections and obligations that are needed to secure proper fire safety in these sectors.	No.	Yes. The self-employed and the voluntary sector are already subject to general obligations in respect of the safety of persons. The proposals would serve to explain the detail of those obligations. Increased burden should be insignificant.	Yes. The public are entitled to protection from fire when on or around premises occupied by the self-employed or the voluntary sector.	Yes. We consider the proposed system to be less burdensome overall than the existing dual regime. There is no sound reason why these sectors of the economy should be treated differently.
Explicit requirement to assess risk and provide appropriate fire precautions.	A new burden would arise from expected improvements in compliance with the existing obligations and duties that the Order will clarify, and explain (or restate in a fire specific context).	No. The protection afforded by the risk based system to be created will afford the necessary protection.	No.	Yes. The self-employed and the voluntary sector are already subject to general obligations in respect of the safety of persons. The proposals would serve to explain the detail of those obligations.	Yes. The public are entitled to protection from fire when on or around premises occupied by the self-employed or the voluntary sector.	Yes. We consider that improved clarity and understanding will benefit public safety with consequent reduction in burdens (costs).

TESTS UNDER THE REGULATORY REFORM ACT
Proposals introducing burdens (continued)

Proposals	Would the proposal impose or remove a burden?	Would the proposal remove any necessary protection?	Would the proposal prevent anyone from exercising a right or freedom?	Would the new burden be proportionate to the benefit?	Would the proposal strike a fair balance between the interests of those affected and the public?	Would the extent to which the order removes or reduces burdens make it desirable for the RRO to be made?
Apply DSEAR requirement – for responsible persons to remove risks and provide precautions to mitigate the detrimental effects of fires that do occur – to all premises covered by Order	A new burden would arise from expected improvements in compliance with existing obligations and duties that the Order will clarify, and explain (or restate in a fire specific context).	No. This would clarify statutory protections and obligation that are needed to secure proper fire safety in these sectors.	No.	Yes. The greater element of this burden will already have been imposed by DSEAR. Most existing premises without dangerous substances already have fire precautions, which prevent the spread of fire.	Yes. This extends protection to all those who might be affected by a fire with little increased burden on business.	Yes we consider improved understanding and clarity will benefit public safety with consequent reduction in burdens (costs).
Clarification of purpose of fire fighting equipment.	A new burden would arise from expected compliance with existing obligations and duties that the Order will clarify, and explain (or restate in a fire specific context).	No. Indeed it would enhance protection for staff and the public through reduction of risks at source.	No.	Yes. There would be general confidence that fire-fighting equipment would be fit for purpose. Personal protection persons can be enhanced and the severity of fires reduced.	Yes. Clarifies the purpose of equipment installed for public safety.	Yes we consider improved understanding and clarity will benefit public safety and assist in the reduction of the severity of fires that do occur with consequent reduction in burdens.
Requirement to maintain fire protection equipment and facilities for use by the fire brigade.	This imposes a new burden.	No. It is designed to ensure that the protections provided will actually work when they are needed. It therefore enhances protections for all in or around the building.	No.	Yes. Should improve safety, particularly of fire fighters. Complements existing legislation to provide or install fire protection equipment and facilities. Further work to be done on costs, but believed to be proportionate.	Yes. We believe there is a clear fair balance in ensuring the maintenance of equipment intended to increase the safety of the public.	Yes we consider improved understanding and clarity will benefit fire fighter safety, public safety and assist in the reduction of the severity of fires that do occur with consequent reduction in burdens.

TESTS UNDER THE REGULATORY REFORM ACT
Proposals introducing burdens (continued)

Proposals	Would the proposal impose or remove a burden?	Would the proposal remove any necessary protection?	Would the proposal prevent anyone from exercising a right or freedom?	Would the new burden be proportionate to the benefit?	Would the proposal strike a fair balance between the interests of those affected and the public?	Would the extent to which the order removes or reduces burdens make it desirable for the RRO to be made?
Modify form of enforcement notices.	Imposes a new burden in that responsible persons will be expected to determine how to comply with the law.	No.	No. Would enhance rights and freedom by giving responsible persons greater freedom of choice.	Yes. Simpler procedure that mirrors health and safety enforcement so is familiar to business.	Yes. The enforcement provisions include a right of appeal to which the enforcement notice will draw attention.	We consider the freedom of choice provided balances well with the removal of the burden of imposed fire precautions solutions.
Alterations notices preventing responsible person implementing fire precautions until proposals have been examined by the enforcing authority.	This is a new burden for those not previously subject to fire certification– but would operate on a discretionary basis. In practical terms, it would help the RP avoid incurring unnecessary expenditure.	No. It is designed to ensure that any fire protection measures provide proper protection.	Could be said to reduce responsible person's freedom to provide fire precautions immediately. But on the other hand it could save the RP fruitless expenditure if the fire authority make changes it will be open to the Responsible Person to appeal against any unreasonable requirements by the enforcing authorities.	Yes – as the notices would be targeted where the enforcing authorities considered there to be sufficient risk. The benefit would be assurance that the precautionary works matched the risk of fire.	Yes. This allows enforcing authority to monitor premises about which they might have a particular concern.	We consider the balance between imposition of the burden and the safeguard offered to prevent unnecessary expenditure makes it a desirable provision of the Order.
Requirement for inspectors to prepare reports to inform future inspections.	Imposes burden on enforcing authority. Could potentially reduce burden on responsible person.	No. Report documentation would ensure that the fire safety regime would be enforced fairly and consistently.	No. It could be argued that it fetters the Inspector's discretion – or that it merely formed a starting point that he or she could depart from with justification.	Yes. Should not impose significant additional burden on enforcing authorities as most inspectors would already prepare reports. Businesses should benefit from consistency of enforcement.	Yes. Benefit to those affected and public through consistent enforcement of fire safety law.	Neither adds to or detracts from desirability for the Order.

TESTS UNDER THE REGULATORY REFORM ACT
Proposals introducing burdens (continued)

Proposals	Would the proposal impose or remove a burden?	Would the proposal remove any necessary protection?	Would the proposal prevent anyone from exercising a right or freedom?	Would the new burden be proportionate to the benefit?	Would the proposal strike a fair balance between the interests of those affected and the public?	Would the extent to which the order removes or reduces burdens make it desirable for the RRO to be made?
Requirement on enforcing authority to institute, develop and maintain enforcement programme.	Imposes burden on enforcing authority.	No. It would require the authority to demonstrate how it ensure effective local implementation.	No.	Yes. Should reassure public in that the enforcing authority have to demonstrate that they were enforcing fire safety law effectively.	Yes. Public have a right to be assured as to their safety.	Does not remove a burden but offers public assurance which tends to a degree of desirability.
Power to investigate cause of fires.	Would not impose a new burden.	No.	This would restrict freedom of home owners and other occupiers to refuse entry to a fire officer seeking to investigate a fire.	Yes. Normally the occupier or responsible person would consent to investigation of the causes of a fire since it would be in their interests. The power would allow that in future they may only refuse access where they have reasonable grounds for doing so. The Courts will determine whether the grounds were reasonable or whether an offence was committed.	Yes. It is in the interests of public safety that the fire service is enabled to investigate the cause of fires.	Does not remove a burden but is in the broader public interest.

TESTS UNDER THE REGULATORY REFORM ACT
Proposals introducing burdens (continued)

Proposals	Would the proposal impose or remove a burden?	Would the proposal remove any necessary protection?	Would the proposal prevent anyone from exercising a right or freedom?	Would the new burden be proportionate to the benefit?	Would the proposal strike a fair balance between the interests of those affected and the public?	Would the extent to which the order removes or reduces burdens make it desirable for the RRO to be made?
Power to take samples of articles and substances.	Does not impose a new burden.	No.	This would restrict the freedom of home owners and responsible persons to refuse to hand over articles or substances. We do not consider that it is reasonable for home owners to exercise an unqualified right to refuse entry to the fire authority since that would obstruct its ability to investigate fires efficiently and effectively.	Yes. Without this power investigation of the causes of fires would be seriously hampered. It would only be exercised subject to procedural safeguards.	Yes. It is in the interest of public safety that the fire service can enforce fire safety law and investigate fires effectively.	Does not remove a burden but is in the broader public interest.
New duty on fire authorities to promote community fire safety.	Imposes new burden on fire authorities.	No.	No. Effective community-based education in fire safety would mean that the community would be more aware of their rights and freedoms as well as their obligations under the new regime.	Yes. This is a function which fire authorities are already fulfilling and produces benefits in terms of the reduction of fires in the home.	Yes. It is in the public's interest to be educated in fire safety.	Does not remove a burden but is in the broader public interest.

TESTS UNDER THE REGULATORY REFORM ACT
Proposals introducing burdens (continued)

Proposals	Would the proposal impose or remove a burden?	Would the proposal remove any necessary protection?	Would the proposal prevent anyone from exercising a right or freedom?	Would the new burden be proportionate to the benefit?	Would the proposal strike a fair balance between the interests of those affected and the public?	Would the extent to which the order removes or reduces burdens make it desirable for the RRO to be made?
Requirement for statutory authorities with an interest in premises to consult one fire/enforcing authority – and vice versa.	Imposes a burden on some statutory authorities but seeks to provide greater consistency and surety for business – so removing a burden.	No. It would enhance protection for business.	No.	Yes. The burden will arise for statutory enforcing bodies. The benefits of surety for business outweigh any minor burden imposed by formalising current best practice.	Yes. It is in the public interest that statutory enforcing authorities co-operate and co-ordinate their actions.	Does not remove a burden but is to the benefit of business.
Requirement for risk assessment to be recorded for all licensed premises and premises subject to an alterations notice.	The current threshold for recording risk assessments is five employees. So a burden would be imposed on persons responsible for licensed premises and premises for which an alterations notice is in force.	No.	Yes. The freedom not to record a risk assessment in cases where there are less than five employees – or no employees.	Yes. The proposal would be applicable to premises that potentially present higher levels of risk to the public and staff.	Yes. The proposal would ensure that licensing authorities and fire enforcing authorities are working from the same information. This will be of benefit to the businesses concerned. For premises subject to alterations notices they would not be able to submit a risk assessment for consideration and so public safety would not be reasonably assured.	Does not remove a burden but is to the benefit of business and in the interests of public safety.

TESTS UNDER THE REGULATORY REFORM ACT
Proposals introducing burdens (continued)

Proposals	Would the proposal impose or remove a burden?	Would the proposal remove any necessary protection?	Would the proposal prevent anyone from exercising a right or freedom?	Would the new burden be proportionate to the benefit?	Would the proposal strike a fair balance between the interests of those affected and the public?	Would the extent to which the order removes or reduces burdens make it desirable for the RRO to be made?
<p>Offences of:(a) failure to comply with the fire safety order or a notice issued under the Order, (b) obstructing an officer of the enforcing authority, (c) impersonating an officer of the enforcing authority falsifying records etc.</p>	<p>Yes. In the case of (a) a new burden could arise for the voluntary sector from application of fire specific law rather than general duties and obligations – and the consequent possibility of fines being imposed. For (b), (c) and (d) these are already applicable.</p>	<p>No. It would enhance public protection.</p>	<p>No.</p>	<p>Yes. The burden will only arise from breaches of the law. It is right that those who do not offer reasonable protection to others or who attempt to obstruct or mislead should be subject to penalties.</p>	<p>Yes. It is in the interests of the public that they are protected from persons who disregard their obligations or attempt to deceive. Burdens will only arise for such persons.</p>	<p>Does not remove a burden but is in the public interest.</p>
<p>Penalties for non-compliance etc.</p>	<p>Impose a burden on those who do not comply with the Order or attempt to deceive.</p>	<p>No.</p>	<p>No.</p>	<p>Yes. The burden only arises for those who break the law. It is in the public interest that such persons face penalties. The penalties proposed mirror those currently in place.</p>	<p>Yes. The burden only arises for those who break the law. It is in the public interest that such persons face penalties.</p>	<p>A burden would be imposed on employers. The provision is largely administrative to properly align general fire safety with process fire safety and other health and safety matters.</p>

ANNEX A

Legislation to be repealed or amended

LANDLORD AND TENANT (WAR DAMAGE) (AMENDMENT) ACT 1941

Sections 83 and 86 of the Fire Prevention (Metropolis) Act 1774 are to be repealed. We propose to amend section 15(3) to reflect this.

BUILDING ACT 1984

BUILDING REGULATIONS 2000

BUILDING (APPROVED INSPECTORS ETC) REGULATIONS 2000

If ongoing maintenance of fire precautions (including access for the fire service etc) is to be achieved by means of the new regime, only amendments to reflect the repeal of the Fire Precautions Act 1971 (and revocation of the fire regulations) and the introduction of the new regime should be required.

We propose that in the Building Act, sections 48(4), 51B(2), 71 and 72(7) should be repealed. We also propose that the reference to “twenty feet” in section 72 be amended to “4.5 metres”.

In the Building Regulations we propose that Regulation 12 should be amended to reflect the new regime – as should Regulation 13 of the Approved Inspectors Regulations.

LONDON BUILDING ACT 1930,

LONDON BUILDING ACTS (AMENDMENT) ACT 1939

The Acts are essentially Local Acts. The 1939 Act contains provisions regarding improvements to means of escape in case of fire in existing buildings. We propose these should be repealed other than for domestic accommodation (private dwellings and HMOs). Other provisions are effectively building regulations but the reform could be used as a vehicle for their revocation if the matters are now covered in national provisions.

CARAVAN SITES AND CONTROL OF DEVELOPMENT ACT 1960.

A licensing regime for caravan sites. The local authority may impose conditions of licence including ones relating to securing proper measures for preventing and detecting fire and adequate means for fighting fire are provided and maintained.

We propose that the provision should be repealed or replaced in so far as it applies to non-domestic private accommodation.

THE CINEMATOGRAF (SAFETY) REGULATIONS 1955.

“ “ (CHILDREN)(NO 2) REGULATION 1955, 1958, 1965
AND (AMENDMENT) REGULATIONS 1976, 1982 AND (DRAFT) 2001.

The safety provisions of the licensing arrangement for cinemas include fire safety. To the extent that we wish to remove fire from licensing, the fire provisions of all cinema legislation could be removed. However like other licensing regimes we should aim to allow that a prosecution for breach of fire law would allow a cinema licence to be revoked.

We propose that in the CSR 55 we should revoke Regulation 30 and Regulation 39(1) and (2). In the CC2R 55 Regulation 4 should be revoked as the risk assessment requirement of the new regime will cover the point.

In the CSAR 2002 proposed provisions in respect of fire safety for the disabled should not be necessary as risk assessment based precautions will take into account the needs of the disabled.

CINEMATOGRAF (AMENDMENT) ACT 1982 CINEMAS ACT 1985

The Acts extend earlier cinema legislation to other types of exhibition. As licensing provisions, fire safety should be removed in line with other licensing provisions.

We propose that references to fire safety conditions should be amended to refer to compliance with the new fire safety regime

THE DOCKS REGULATIONS 1988

Provide for safety during loading and unloading. Apply to ships and to dock premises. Include means of escape and fire fighting equipment. The new fire regime will apply to dock premises.

We propose to amend Regulation 9 which relates to means of escape in case of fire and means for fighting fire (insofar as these are general fire precautions) to reflect the new regime.

FIRES PREVENTION (METROPOLIS) ACT 1774

Only two sections still exist, sections 83 (a fire prevention measure which allows insurance companies to insist that if there is any hint of fraud or arson, the insurance money they pay out in respect of fire damage can only be used to rebuild or repair the damaged property) and section 86 which prevents any action, suit or process being taken against a person who owns property which accidentally burns down. Both sections have been determined as applying to all of England and Wales. The law Commission already propose to repeal section 83. Section 86 may run counter to the European Commission view that European law allows employees to sue for failure to comply with the law.

We propose to repeal both sections.

**FIRE PRECAUTIONS ACT 1971
 FIRE PRECAUTIONS (HOTELS AND BOARDING HOUSES) ORDER 1972
 FIRE PRECAUTIONS (FACTORIES, OFFICES, SHOPS AND RAILWAY
 PREMISES) ORDER 1989
 FIRE PRECAUTIONS (APPLICATION FOR CERTIFICATE) REGULATIONS 1989**

We propose to repeal the whole Act, designating Orders and Regulations.

**FIRE PRECAUTIONS (SUB-SURFACE RAILWAY STATIONS) REGULATIONS
 1989
 FIRE PRECAUTIONS (SUB-SURFACE RAILWAY STATIONS) (AMENDMENT)
 REGULATIONS 1994**

The Regulations, which were made following the tragic Kings Cross fire, are solely about fire safety and will fall when the Fire Precautions Act 1971 is repealed – unless specifically cited in the new regime. The regulations are highly prescriptive although they do allow the fire authority some discretion.

We propose to revoke the Regulations in favour of the new regime.

**THE FIRE PRECAUTIONS (WORKPLACE) REGULATIONS 1997
 THE FIRE PRECAUTIONS (WORKPLACE) (AMENDMENT) REGULATIONS 1999**

Implement European legislation. The requirements will form the basis of the new fire regime. We propose to revoke the Regulations.

**FIRE SERVICES ACT 1947, FIRE SERVICES ACT 1951, FIRE SERVICES
 ACT 1959**

Of the 1947 Act, the sections of the Act dealing with Fire Inspectors are to be read as including a reference to the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997. Crown exemption is to continue for the time being and Fire Inspectors are to enforce for those premises.

We propose to amend the Fire Services Act 1947 to reflect repeal of the Fire Precautions Act and revocation of the Fire Regulations and their replacement by the Regulatory Reform (Fire Safety) Order. We further propose to introduce a duty of community fire safety in section 1 of the Act.

HOUSING ACT 1985, 1996 AND SUBORDINATE LEGISLATION

The intent is to apply the regime to HMOs and blocks of flats only insofar as landlords etc. should be responsible for common fire precautions and maintenance of fire precautions for use by the fire service (a wider application of the Management of Houses in Multiple Occupation Regulations). The Housing Acts etc. may need to be amended to reflect the new regime.

LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980

Part II of the Act provides that fire authorities are required to publish information about the authorities' functions in relation to housing or land. This is similar to the requirement we had proposed for the fire authority to publish information about enforcement practice – which may fall within the scope of this provision. We propose to amend the Act to require details of enforcement practice in respect of the Regulatory Reform (Fire Safety) Order.

SMOKE DETECTORS ACT 1991

Not in force as the matter was dealt with by Building Regulations. We propose to repeal the Act.

ENVIRONMENT AND SAFETY INFORMATION ACT 1988

The Act requires fire authorities to maintain a register of section 10 notices served (currently other than notices solely for the protection of persons at work).

We propose that the reference to the Fire Precautions Act in the schedule should be amended to reflect the new regime. We further propose that the extent of the provision should be extended to cover all enforcement notices served under the new fire regime.

PET ANIMALS ACT 1951

Provides for the licensing of pet shops. Section 1(3)(e) provides that for a licence to be granted the local authority must be satisfied that appropriate steps will be taken in case of fire or other emergency and shall specify such conditions in the licence as appear to be necessary (which could include fire precautions). We propose that insofar as it covers fire precautions for the protection of persons the Act should be amended to refer to the new fire regime.

ZOO LICENSING ACT 1981

Licenses can have conditions about safety of the animals or the public but not specifically or primarily about protection of workers. We propose that conditions of licence for protection of persons should be amended to refer to compliance with the new fire regime.

THE FACTORIES ACT 1948, 1959, 1961

THE FACTORIES ACT 1961 ETC (REPEALS) REGULATIONS 1976

The Factories Acts ceased to have effect for general fire safety when the 1976 Designating Order was made under the Fire Precautions Act 1971. If the provisions relating to means of escape etc (sections 40 to 51) have not already been repealed we propose that this should now be done insofar as those provisions relate to general fire precautions.

CHARITIES ACT 1993

The Charity Commission has broad ranging powers including being able to act to safeguard the property of a charity. This will need to be considered as part of work on “responsible persons”. The Act also allows that where the trustee body or a Charity has been incorporated the individual trustees remain individually accountable.

THE MARRIAGES (APPROVED PREMISES) REGULATIONS 1995

A type of licensing provision. Point 3 of Schedule 1 requires adequate fire precautions. We propose that this should be amended to refer to compliance with the Regulatory Reform (Fire Safety) Order in premises to which that legislation applies (so should not alter for private dwellings).

EDUCATION ACT 1944, EDUCATION ACT 1980, EDUCATION ACT 1981 EDUCATION ACT 1996 EDUCATION (SCHOOL PREMISES) REGULATIONS 1981 EDUCATION (SCHOOLS AND FURTHER EDUCATION) REGULATIONS 1981 EDUCATION (SCHOOLS AND FURTHER EDUCATION) (AMENDMENT) REGULATIONS 1983, 1987, 1988 & 1998 EDUCATION (PARTICULARS OF INDEPENDENT SCHOOLS) REGULATIONS 1997

Education legislation makes general provision for safety in case of fire. Independent schools need to demonstrate they have/are implementing appropriate fire precautions if registration is to be obtained/retained. The new regime will apply to all education premises.

We propose that all references to fire safety be revoked except insofar as they are required for registration purposes. The education regime should refer to compliance with the new fire regime. Failure to comply with the fire regime would count as a breach of registration terms.

FIRE SAFETY AND SAFETY OF PLACES OF SPORT ACT 1987 SAFETY OF SPORTS GROUNDS ACT 1975

Part I of the 1987 Act (and schedule 1) merely amend the Fire Precautions Act 1971 and we propose to revoke it. Part II extends the Safety of Sports Grounds Act 1975 to all sports grounds. Part III of the Act requires safety certificates for stands at sports grounds. The section specifically disapplies the Fire Precautions Act insofar as matters covered by it could be imposed by a safety certificate. However, the Fire Precautions (Workplace) Regulations 1997 (as amended) disapply the provisions of a safety certificate to the extent that it would require a person to contravene any provision of the workplace fire precautions legislation. Fire authorities are statutory consultees for sports ground legislation and enforce the fire regulations.

We propose to amend the sports ground legislation so that safety certificates require compliance with the new fire regime (and contravention of fire law is to be treated as a contravention of the safety certificate). Enforcement will be by the authority enforcing the sports ground legislation. In particular we propose to revoke section 9(1)(d) of the 1975 Act and Part 1 and schedule 1 of the 1987 Act as they only amend the Fire Precautions Act 1971

GAMING ACT 1968 GAMING (AMENDMENT) ACT 1982

A licensing provision (amended by the 1982 Act) which requires premises used for gaming to be licensed. The Act requires the applicant to send a copy of the application to the Fire Authority. The licence contains fire safety provisions and fire safety is a material factor for consideration of the grant or renewal of a licence.

We propose that fire safety should be removed from the conditions of licence in its current form and replaced with reference to compliance with the Regulatory Reform (Fire Safety) Order. We further propose to clarify that prosecution by the fire authority should be grounds for revocation of licence etc.

LICENSING ACT 1961, LICENSING ACT 1964, LICENSING ACT 1988

Licensing is the subject of separate review. The Licences under these Acts require the licensing authority to be satisfied as to the safety of the premises and allow fire safety to be one of the conditions of licence. We propose that references to safety conditions (including fire) should be altered to reflect that compliance with the new fire regime is the fire safety requirement for the grant of a licence. We further propose that the new fire safety order will allow that prosecution (or issue of a notice) under the new regime may be treated as if it had been taken (or served) under licensing law.

LICENSING (OCCASIONAL PERMISSIONS) ACT 1983

The Act allows “reputable” organisations to be granted a licence to sell alcohol at functions lasting not more than 24 hours. The Justices must be satisfied that the premises will be a suitable place (i.e. safe). Fire is not specifically mentioned. We propose to amend the requirement to require compliance with the Regulatory Reform (Fire Safety) Order.

LICENSING ACT 1988

The Act amended the licensing Act 1964 – primarily in respect of licensing hours. The Act is likely to be revoked by the Law Commission or as part of licensing reform. It seems it could be revoked as part of our reform as this would be a suitable vehicle.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

The Act provides for licensing of public entertainments. The Act allows the local authority to attach conditions to the Licence – which may include fire safety conditions.

In addition the Act amends the Public Health Act 1936 and the Caravan Sites and Control of Development Act 1960 to require consultation with the fire authority. These provisions may be subject to amendment (in the amended Acts).

We propose that references to fire safety should be amended to refer to compliance with the Regulatory Reform (Fire Safety) Order.

The Act also allows the fire authority to determine that “fireman’s switches” may be required for all luminous signs in their area. Such provision is also contained in some local acts – which we have proposed be repealed in favour of national provision.

We propose to bring this forward as a power of fire authorities and so intend to repeal the local act provisions and the LG(MP) provision.

LONDON LOCAL AUTHORITIES ACT 1991, LONDON LOCAL AUTHORITIES ACT 1995 LONDON LOCAL AUTHORITIES ACT 1996

The 1991 Act provides for the licensing of special treatment premises. The London Fire and Emergency Planning Authority (LFEPA) are provided with power of entry (s.15). Licensing conditions (s.6) include public safety and, specifically, provision and maintenance of proper precautions against fire. We propose that the fire safety requirement should be amended to refer to compliance with the Regulatory Reform (Fire Safety) Order. The LFEPA power of entry will be unnecessary as it is provided for in the RR(FS)O and can be repealed.

The 1995 Act (s.16-18) provides for licensing of “near beer” premises. A licence can be refused on the grounds that the fire precautions are not adequate. Conditions may be attached which include both public safety and provision and maintenance of proper fire precautions. We propose that the provision for specific fire precautions should be replaced by reference to compliance with the new regime.

The 1996 Act contains provisions to provide for consultation with the police and fire service in relation to applications for licences. We do not intend to remove this requirement.

THEATRES ACT 1968

Fire safety can form a licensing condition. We propose to amend the Act so that the fire safety condition would be compliant with the new fire regime.

THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 1994

The Regulations make reference to information to be provided – which includes risk assessment made under MHSW. This by proxy will include the Fire Precautions (Workplace) Regulations insofar as they apply. Revocation of the Fire Regulations will break this link. Mention of the new regime will therefore need to be made in these Regulations. Notably in Regulations 15 – 19.

We propose to add reference to the risk assessment requirements of the Regulatory Reform (Fire Safety) Order.

THE CONSTRUCTION (HEALTH, SAFETY AND WELFARE) REGULATIONS 1996

The Regulations contain provision (at Regulations 18-21) for emergency routes and exits, emergency procedures, fire detection and fire fighting for construction sites. The provisions, so far as they relate to fire, should be removed in favour of the new regime.

We propose that references to compliance with the Regulatory Reform (Fire Safety) Order should be inserted in Regulations 18 to 21. We further propose that the enforcement differentiation of Regulation 33 should be continued with HSE keeping responsibility for out and out construction sites.

THE CONTROL OF MAJOR ACCIDENT HAZARDS REGULATIONS

The Regulations provide for prevention of major accidents and prevention of harm to persons on and off the site and to the environment in the event of a major accident at sites carrying out certain industrial activities as defined in the schedule to the Regulations.

Major accident includes a major fire or explosion.

The person having control of an industrial activity to which the Regulations apply is required to notify the HSE of the existence of the site and to make arrangements with the local authority for an offsite emergency plan (to deal with the effects of a major accident).

We propose that the new regime will apply to these sites and therefore that necessary amendments be made to clarify fire authority enforcement of general fire precautions measures (note removal of Fire Certificates (Special Premises) Regulations below).

THE DANGEROUS SUBSTANCES IN HARBOUR AREAS REGULATIONS 1987

Imposes a duty (Regulation 18) on the owner of a berth to take all reasonable precautions in respect of fire and explosion – including at 18(2)(a) means for fighting fire (b), training in first aid fire fighting and (c) access for the fire service. We propose to amend the Regulation to refer to compliance with the Regulatory Reform (Fire Safety) Order.

Regulation 26 covers emergency plans by the harbour authority and may fall under the draft Dangerous Substances and Explosive Atmospheres Regulations (DSEAR).

Regulation 27(1) covers means of escape from the berth and means for contacting the emergency services. We propose the regulation should be amended to reflect the new fire regime.

Regulation 47(4) amends the Fire Certificates (Special Premises) Regulations and we propose to revoke it.

ENVIRONMENT AND SAFETY INFORMATION ACT 1988

The Act requires fire authorities to maintain a register of section 10 notices served

(currently other than notices solely for the protection of persons at work).

We propose that the reference to the Fire Precautions Act in the schedule should be amended to reflect the new regime. We further propose that the extent of the provision should be extended to cover all enforcement notices served under the new fire regime.

FIRE CERTIFICATE (SPECIAL PREMISES) REGULATIONS 1976

By agreement with HSE we propose to revoke the Regulations.

HEALTH AND SAFETY AT WORK ETC. ACT 1974

The primary Health and Safety legislation. General fire safety is within its scope but not generally enforced by virtue of policy agreement. It amends the Fire Precautions Act 1971 (HSWA Section 75 and Schedule 8). These provisions can be revoked (if that has not already happened). The Act is itself the subject of separate review by HSE/C. References to the Fire Precautions Act should be removed. The Act should be amended to reflect the new regime. This will need to be considered further when the detail of the regime is closer to being finalised and policy agreements are reached about enforcement practice.

We propose to repeal section 75 and Schedule 8. We further propose that the Act should be disappplied from application to general fire precautions in premises and other places to which the Regulatory Reform (Fire Safety) Order applies.

THE HEALTH AND SAFETY (CONSULTATION WITH EMPLOYEES) REGULATIONS 1996

Implement European requirements. We will need to amend the Regulations or otherwise link to them to provide for consultation with employees in respect of fire precautions under the new regime.

We propose to apply the Regulations to the Regulatory Reform (Fire Safety) Order.

THE HEALTH AND SAFETY (ENFORCING AUTHORITY) REGULATIONS 1989

The Regulations make local authorities responsible for enforcing certain elements of HSWA and the relevant statutory provisions. Historically fire authorities undertook some of these enforcement duties. However, the introduction of combined fire authorities has meant that only county brigades can be utilised in this way. If HSE wish fire authorities to be able to enforce, then all fire authorities should be able to do this. If not then all fire authorities should be removed from delegated authority under the regulations.

We propose to remove fire authorities from the definition of local authority for the purposes of these regulations. We further propose that reference to the Fire Precautions Act 1971 (which defines a fire authority and so makes the HSE responsible for enforcement at FA premises) should be amended to refer to a fire authority under the Fire Services Act 1947.

MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS 1999

We propose that references (and inclusion) of the Fire Precautions (Workplace) Regulations be revoked. Elements of the regulations will be re-enacted as part of the new fire regime (risk assessment etc. etc.) to ensure continued transposition of the European Directives.

MINES AND QUARRIES ACT 1954

The provisions of the Act mainly apply to working below ground. However, section 73 makes it illegal for a person to be employed in a room or confined space (which is a dangerous one) unless it has adequate means of escape in case of fire. We propose, that the fire provisions relating to this section should be amended to require compliance with the new regime (insofar as the room is above ground).

MINES MISCELLANEOUS HEALTH AND SAFETY PROVISIONS REGULATIONS 1995

Regulation 4(5) requires at (a) that fire is included in the health and safety emergency plan. We propose that the provision should be amended to reflect the application of the new fire regime to surface buildings.

THE RAILWAYS (SAFETY CASE) REGULATIONS 1994

Requires a safety case to be prepared. The matters to be included themselves include the significant findings of risk assessments made under MHSW and the workplace fire precautions legislation. With the revocation of the Fire Regulations we propose to amend these Regulations to provide a separate reference to the new regime.

THE SAFETY REPRESENTATIVES AND SAFETY COMMITTEES REGULATIONS 1977

Apply to health and safety. These Regulations are applied to fire safety by the Fire Precautions (Workplace) Regulations. We propose to carry application forward to the new regime in order to comply with European requirements. This may be done by amendment of the Regulations.

THE WORK IN COMPRESSED AIR REGULATIONS 1996

Deal with tunnelling and construction. They overlap with the existing Fire Regs (and so the new regime). May also cover Barometric chambers. Contain fire precautions requirements in respect of emergency arrangements and fire fighting (Regulations 13 and 14). The position regarding these regulations and application of the new regime to such operations will be considered with the HSE before any decision is taken on amendment or revocation.

CHILDREN AND YOUNG PERSONS ACT 1933

The Act contains provision (at sections 11 and 12) requiring the protection of children at places of entertainment where the majority of those attending are children. The provision is general and includes safety from fire. A provision specifically for the safety of children would appear to be superfluous as the matters should be covered by risk assessment based health and safety and fire law.

We therefore propose the provision should be repealed.

CHILDREN'S HOMES REGULATIONS 2001 CHILDREN'S HOME (WALES) REGULATIONS 2002

The Regulations contain (in Regulations 32 and 31 respectively) fire provisions which we propose should be amended to reflect the new regime.

NATIONAL HEALTH SERVICE AND COMMUNITY CARE ACT 1990 NATIONAL HEALTH SERVICE AND COMMUNITY CARE ACT 1990 (COMMENCEMENT NO.1) ORDER 1990

The Act removed Crown exemption from the NHS and made minor amendment to application of the Fire Precautions Act 1971. We propose to revoke references to the Fire Precautions Act.

CAPITAL ALLOWANCES ACT 1990

The Act allows (S. 69 and 70) for expenditure on fire safety requirements in a notice under the Fire Precautions Act 1971 or the Sports grounds legislation to be treated as capital expenditure for tax purposes.

Subject to the views of HM Treasury, we propose the provisions should be revoked if they duplicate other provision or amended to reflect the new regime if tax relief will not otherwise be available .

FINANCE ACT 1975

Section 15 is similar to the Capital Allowances Act 1980. It allows tax relief to be claimed for work specified by the fire authority as required in order to gain a fire certificate or to comply with a section 10 (FPA) notice. We propose that the provision should be amended to reflect the new regime.

Local Acts

The following Local Acts have been identified as containing fire safety provisions. Subject to further consideration we propose that these provisions should be repealed insofar as they have subsequently been overtaken by Building Regulations or will be covered by the new fire safety regime:

Local Act

Berkshire Act 1986

Bournemouth Borough Act 1985

Cheshire County Council Act 1980

County of Cleveland Act 1987

Clwyd County Council Act 1985

Cumbria Act 1982

Derbyshire Act 1981

Dyfed Act 1987

East Sussex Act 1981

Essex Act 1952

Greater London Council (General Powers) Act 1986

Greater Manchester Act 1981

Hampshire Act 1983

Isle of Wight Act 1980

County of Kent Act 1981

County of Lancashire Act 1984

Leicestershire Act 1985

Merseyside Act 1980

Poole Borough Council Act 1986

County of South Glamorgan Act 1976

South Yorkshire Act 1980

Staffordshire Act 1983

Surrey Act 1985

Tyne & Wear Act 1976

West Midlands County Council Act 1980

West Yorkshire Act 1980

Worcester City Council Act 1985

ANNEX B

List of Consultees

All Government Departments
All District Councils
All County Councils
All Borough Councils
All Metropolitan Councils
All Unitary Authorities
All Fire Brigades in England & Wales
Fire Brigades Union
Chief and Assistant Chief Fire Officers' Association
Retained Firefighters Union
British Fire Protection Systems Association & Members
Fire Extinguishing Trades Association & Members
Fire Industry Confederation & Members
The Local Government Assn
National Assembly of Wales
TUC & Affiliated Unions
CBI
Members of the Fire Safety Advisory Board
Members of the Central Fire Brigades Advisory Council
Major Oil Producers
Major UK Universities
Major UK Charities
NHS Trusts
The Football Assn
Rugby Football Union
England & Wales Cricket Board
BBC
BNFL
British Energy
Powergen
Corus

Unilever
Major UK Insurers
European Commission
Houses of Parliament
Scout Association
National Consumer Council
Church of England
English Heritage
National Trust
Disability Organisations
Major UK Retailers
Law Commission
UK Breweries
Various Industry Federations
Institute of Directors
British Telecom
RIBA
Various Entertainment Groups & Bodies
Various Museums & Galleries
Loss Prevention Certification Board
UK Shopping Centres
Various Hotel Chains
Vehicle Manufacturers
Tourist Boards
Arts Council
Law Society

ANNEX C

Regulatory Reform Proposals and Orders – Parliamentary Consideration

Introduction

1. These reform proposals in relation to the reform of fire safety legislation will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by introducing a Regulatory Reform Order under the Regulatory Reform Act 2001. Regulatory Reform Orders are subject to preliminary consultation and to extended Parliamentary scrutiny (by Committees in each House of Parliament) of any subsequently proposed Order. On that basis, the Minister invites comments on these reform proposals in relation to fire safety legislation as measures that might be carried forward by a Regulatory Reform Order.

Regulatory Reform Proposals

2. This consultation document on fire safety legislation has been produced because the starting point for regulatory reform proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.
3. Following the consultation exercise, when the Minister lays proposals before Parliament under the Regulatory Reform Act, he or she must also lay a report for consideration by the Scrutiny Committees setting out a summary of:
 - the burden imposed by the existing law;
 - how the proposals otherwise further the other objects of the Regulatory Reform Act (re-enacting proportionate burdens, introducing new but proportionate burdens, removing inconsistencies and anomalies);
 - whether there is ‘necessary protection’ and how it is to be continued;
 - how any reasonable expectation of the exercise of rights or freedoms is affected (if at all) and how the exercise can be continued;
 - how new burdens (if any) are both proportionate and, taking the proposals as a whole, strike a fair balance between the public interest and the interests of the persons affected by the new burdens;

- whether an Order that imposes burdens is desirable in terms either of the burdens it removes or the other benefits it brings;
 - whether any parts of the proposed Order are being designated as ‘subordinate provisions’, allowing them to be changed by less elaborate Parliamentary procedures in the future;
 - what cost savings or increases are expected, and why;
 - what other benefits there will be from the proposals;
 - details of the consultation process;
 - any representations received as a result of that consultation; and
 - the changes made as a result.
4. On the day the Minister lays the proposals and report, the period for Parliamentary consideration begins. It lasts for 60 days, excluding Parliamentary recesses of more than four days. If you want a copy of the proposals and the Minister’s report, you will be able to get them either from the Government Department concerned or by visiting the Cabinet Office’s website at <http://www.cabinet-office.gov.uk/regulation/act/index.htm>.

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise regulatory reform proposals and draft orders. This is done by the Scrutiny Committees.
6. Standing Orders in the Commons stipulate that the Committee there considers whether proposals:
- (a) appear to make an inappropriate use of delegated legislation;
 - (b) remove or reduce a burden or the authorisation or requirement of a burden;
 - (c) continue any necessary protection;
 - (d) have been the subject of, and take appropriate account of, adequate consultation;
 - (e) impose a charge on the public revenues or contain provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribe the amount of any such charge or payment;
 - (f) purport to have retrospective effect;
 - (g) give rise to doubts whether they are *intra vires*;
 - (h) require elucidation, are not written in plain English, or appear to be defectively drafted; or

- (i) appear to be incompatible with any obligation resulting from membership of the European Union;
 - (j) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
 - (k) satisfy the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Act;
 - (l) satisfy the test of desirability set out in section 3(2)(b) of the Act;
 - (m) have been the subject of, and take appropriate account of, estimates of increases or reductions in costs or other benefits which may result from their implementation; or
 - (n) include provisions to be designated in the draft order as subordinate provisions; and in the case of the latter consideration the committee shall report its opinion whether such a designation should be made, and to what parliamentary proceedings any subordinate provisions orders should be subject.
7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.
 8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee could then be expected to report:
 - whether the Minister should proceed to lay a draft order in the same terms as the original proposal, or
 - whether amendment is necessary, or
 - whether the order-making power should not be used (for example, because of the significance or sensitivity of the proposal).
 9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at
 - <http://www.parliament.uk/commons/selcom/drghome.htm> for the Deregulation and Regulatory Reform Committee in the Commons; and
 - <http://www.parliament.the-stationery-office.co.uk/pa/ld/lddereg.htm> for the Delegated Powers and Regulatory Reform Committee in the Lords.
 10. After the 60 days for Parliamentary consideration, the Minister can lay a draft order before both Houses, this time for the approval of Parliament.
 11. Each of the Scrutiny Committees examines the draft order to see how far its views have been taken into account. They report, within 15 sitting days, whether the draft order should be approved or not, and it would then be for the relevant House itself to take its final decision.
 12. The final draft order then has to be approved by both Houses of Parliament before becoming law.

How To Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document (in this case, Mark Coram of the Office of the Deputy Prime Minister). When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.
14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.
15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.
16. The Scrutiny Committees appointed to scrutinise Regulatory Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
W1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571
email: DPDC@parliament.uk

Regulatory Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020 7219 2830/2833/2837
Fax: 020 7219 2509
email: deregcom@parliament.uk

Non-disclosure of responses

17. Section 7 of the Act provides what should happen when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed.
18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.
20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders.

ANNEX D

Consultation Criteria

The criteria in the “*Code of Practice on Written Consultation*” published by the Cabinet Office apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory or external requirements (e.g. under European Community law) they should otherwise generally be regarded as binding on UK Departments and their agencies unless Ministers conclude that exceptional circumstances require a departure.

The criteria should be reproduced in consultation documents with an explanation of any departure, and confirmation that they have otherwise been followed.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and reasons for decisions finally taken.
7. Designating a consultation co-ordinator who will ensure the lessons are disseminated.

ANNEX E

Partial Regulatory Impact Assessment

1.(i) Title of proposed measure:

The Regulatory Reform (Fire Safety) Order

2.(i) The issue and objective:

Issue: 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 over many pieces of legislation. At present, many premises are subject to both the Fire Precautions Act 1971, under which fire authorities prescribe, by means of fire certificates, the fire safety measures to be taken for the protection of occupants, and the Fire Precautions (Workplace) Regulations, under which the employer is responsible for assessing fire risks and providing fire precautions for the safety of his employees. In addition to this there are many other pieces of legislation which, while not principally concerned with fire safety, contain fire safety provisions.

The overlapping of different pieces of legislation based on varying philosophies causes confusion and difficulties for business. In addition to overlaps in respect of legislation dealing with specific uses of premises and places, there are general duties that encompass fire within their wider regime. These regimes include health and safety legislation, civil liability legislation and in some cases general regimes applicable to specific sectors – such as education. These are applicable to persons other than just employers and can include the self-employed and the voluntary sector.

The aim of any reform of fire safety legislation would be to simplify, rationalise and consolidate existing legislation so that, so far as possible, any premises should be subject to one simple fire safety regime. We aim to clarify the legal position for all sectors by drawing fire out from the general to make it an overarching single identifiable requirement. In doing so we can provide for a risk based approach to fire safety allowing greater flexibility for those responsible for the implementation of measures to protect the public and staff from fire and its associated dangers. By utilising risk assessment we will also be able to provide for more efficient, effective enforcement by the fire service who will become largely unfettered by existing legislative constraints arising from the demands placed on them by competing regimes which require their attention.

2.(ii) Risk Assessment

The Order would address three broad risks:

(a) Imposition of unnecessary burdens on business which may contribute to business failures

Confusing and overlapping legislation constitutes a burden on business. Some employers have to apply for a fire certificate under the Fire Precautions Act as well as carrying out a risk assessment under the Fire Precautions (Workplace) Regulations. They may also have further fire safety requirements imposed on them by licensing and other legislation. This of itself creates unnecessary burdens through administrative work, together with difficulties and confusion arising from multiple application of differing fire safety regimes. In particular it is difficult for business and others to identify the duties and responsibilities they have and the priority of these.

b) Avoidable fires resulting in economic loss and possibly resulting in deaths and injuries

The wider coverage of the new legislation – which will require specific attention to be given to reduction of fire risk and application of preventative and protective measures – when taken with improved levels of compliance can reasonably be expected to result in a reduction in the number of fires and the severity of fires that do occur. This will be particularly applicable in the cases of those elements of the self-employed, the voluntary sector and employers who have not been complying with existing legislation. They would, for the first time, be carrying out risk assessments and considering measures to prevent fire occurring and to mitigate against its detrimental effects. It is reasonable to assume that some fires would be avoided as a result and the severity of fires that do occur would be reduced.

(c) Imposition of unnecessary restrictions on local authorities and other enforcing authorities which adversely affect efficiency and effectiveness

Fire authorities are currently required to inspect premises requiring a fire certificate under the Fire Precautions Act and to prepare the certificate. This applies in hotels and boarding houses and certain larger offices, shops and factories and railway premises. They also have a direct enforcement responsibility for the Fire Precautions (Workplace) Regulations which apply to virtually all places where people are employed to work (though they are primarily intended to protect employees only). In addition, enforcing authorities are faced with many requests from other authorities regarding the suitability of fire precautions under other competing regimes – such as the various licensing requirements. We intend that the new Order will create, so far as is possible, one single fire safety regime to be enforced by fire authorities. Fire authorities will be free to develop their inspection programmes on the basis of risk, giving priority to those premises which they consider, based on their local knowledge, to present the highest risk, rather than being restricted to certain uses of buildings which have been designated by Parliament (which also contributes to reducing the risk identified previously in 2(b)). This will also allow that once an inspection has been carried out following consultation by another authority no further need will arise in the short term for an inspection to ascertain compliance with the new regime – unless there are reasons to believe that fire risks or fire precautions solution to address those risks has, or will need to change.

3.(i) Identify options

Three options have been identified:

Option 1 – Do nothing;

Option 2 – Reform general fire safety legislation but not other legislation with fire safety provision such as licensing law. This would involve combining the provisions of the Fire Precautions Act and the Fire Precautions (Workplace) Regulations to provide a regime based on risk assessment by the responsible person applying to all workplaces and hotels. The new Order would also incorporate the provisions of the Dangerous Substances and Explosive Atmospheres Regulations which are likely to be made by HSE later this year. As these will already be in force, their incorporation into the new Order will create no new burdens.

Option 3 – In addition to the reforms identified as option 2 rationalise all fire safety-related legislation and provide protection for people in the vicinity of a place as well as the occupants, the self-employed and the voluntary sector. This would entail removing, so far as is possible, fire safety requirements in all other legislation so that there would be fewer overlapping regimes.

3.(ii) Issues of equity or fairness

The measure should impact broadly equally across employers, large and small, who should already be complying with existing legislation with similar requirements. The risk-based approach to enforcement will mean that the burden will shift from businesses who comply with the law and whose premises are safe to those who do not comply. There will be a new burden on small businesses with no employees and elements of the voluntary sector. However, these will largely arise through enforcement and publicity of the regime rather than through the actual imposition of new requirements. All persons who provide places which will be used by others are subject to safety legislation be it health and safety (which encompasses fire) or more general liabilities that impose a duty of care. Consequently we take the view that any real term costs that do arise will fall on those who for one reason or another have not complied with existing requirements. This seems to be both fair and equitable and be in the public interest.

4.(i) Identify the benefits

Option 1 – no perceived additional benefits.

Option 2 – partial simplification as a result of removing the requirement for fire certificates. There would also be greater clarity as both the Fire Precautions Act and Fire Precautions (Workplace) Regulations are difficult to understand. But this option would still leave some premises with multiple fire safety regimes because other legislation such as licensing law and Children's Homes Regulations would still impose separate fire safety requirements. Could have some impact in reducing fires through increased awareness (see section 4.(ii) below).

Option 3 – should simplify further the legal requirements for business and provide consistency across fire safety and health and safety law. This would include extending fire specific duties of protection to the self-employed and elements of the voluntary sector. In

doing so would clarify the duties owed by all sectors under various existing regimes by drawing them together and restating them in a goal based, risk specific, regime. Addresses all the risks.

4.(ii) Quantifying and valuing the benefits

Option 1

This offers no additional benefits.

Option 2

Fire Certificates

Option 2 would remove the requirement for businesses to apply for fire certificates. Based on a small survey of the income from fire certificates in fire brigades of different sizes, the total saving to business is estimated to be approximately £1.7 million pa. A more comprehensive survey will be undertaken for the full regulatory impact assessment.

Fire authorities charge the administrative cost of preparing fire certificates. The effect on them should therefore be neutral in cost terms.

Reduction in number of fires

We recognise that the standard of fire safety in England and Wales is generally high but there is evidence that many employers are unaware of their responsibilities under the Fire Precautions (Workplace) Regulations. A survey carried out by the Chief and Assistant Chief Fire Officers' Association (CACFOA) concluded that the level of awareness among employers of the requirements of the Regulations was 57.8%. These responsibilities include carrying out risk assessments and taking steps to remove or reduce risks. These can, in many cases involve fairly basic, low-cost measures such as ensuring that escape routes are unblocked and that ignition sources are separated from flammable material.

Many existing requirements applicable in varying degrees to the different sectors work on the basis of provision of fire precautions to deal with fires that have occurred rather than seeking to directly address the fire hazards and so prevent fires in the first instance. The move to a regime that specifically addresses hazard reduction and prevention of risk will generate greater attention and action on this area. This should assist in achieving our aim of reducing the number of fires that occur and the severity of those that do.

The new Order will incorporate the risk assessment approach and fire prevention provisions of the existing Fire Precautions (Workplace) Regulations and the draft Dangerous Substances and Explosive Atmospheres Regulations which HSE intend to make later this year. We therefore believe that improved compliance resulting from clarification of requirements and heightening of awareness of duties and obligations should bring a benefit in terms of fire safety with a consequent cost saving (in terms of property losses, lost business and, potentially loss of life).

The making of the Order will be accompanied by a publicity campaign appropriate to a reform of this significance. In addition to this, fire authorities will have greater freedom to develop their inspection programmes on the basis of risk. Instead of inspecting relatively low risk premises which have fire certificates under the Fire Precautions Act they would be able to target higher risk premises. It is therefore considered reasonable to assume that awareness of, and compliance with, fire safety requirements might be increased to, say, 85%.

Provisional figures for 2000 show that there were in the region of 33700 fires in non-domestic premises (with which we include private garages sheds etc.). 43% of fires in other buildings (i.e. non-domestic) are recorded as being malicious (i.e. arson) and 57% as accidental or unspecified cause. Of the total number of fires about 20% result from faulty fuel supplies or faulty appliances or leads. Many of these could be addressed through risk assessment and adequate precautionary measures on the health and safety and fire safety front. Other causes include 2400 fires from careless handling of fire or hot substances, 1900 from placing articles too close to heat sources and 4800 from misuse of equipment or appliances.

Each of these are areas where risk assessment together with preventative and protective measures could be reasonably assumed to result in a potentially dramatic fall in the number of such fires.

On a conservative basis, taking only the core elements of the average costs of a fire in non-domestic property identified in the report “The economic costs of fire” (Home Office Research Study 229) (costs as a consequence, being property losses, death, injury, loss of business) as identifiable costs, this gives a figure of £32900 as the average cost to business per fire.

Category	Number of fires	Averaged cost saving of 5% reduction in number of fires £k	Averaged cost saving of 10% reduction in number of fires £k	Average consequential cost per fire (£,1999)
Agricultural premises	1,400	2,314	4,628	33,061
Construction Industry premises	500	797	1,593	31,866
Other industrial premises	4,200	7,292	14,584	34,724
Retail distribution	5,400	8,811	17,622	32,633
Hotels, Boarding houses, hostels etc	2,400	4,177	8,353	34,808
Restaurant, cafes, public houses etc.	3,200	5,354	10,707	33,460
Education	1,900	2,796	5,592	29,435
Hospitals	3,200	5,005	10,011	31,286
Recreational and other cultural premises	2,500	3,710	7,421	29,687
Other	9,000	15,040	30,081	33,424
Totals	33,700	55,298	110,596	32,900

It is difficult to realistically apportion these savings between business, the self-employed and the voluntary sector, particularly when it is recognised that larger businesses may have larger fire and so be responsible for a larger portion of the costs of fire borne by business and industry than would be suggested by a simple apportionment by percentage of employers to self-employed to voluntary sector. Nonetheless if such an apportionment were taken as a starting point this would give savings figures of:

Business £16.6m to £32.2

Self-employed £38.35m to £76.7m

Voluntary sector £0.55m to £1.1m

Reduction in false alarms

The Order will contain provisions enabling fire authorities to take enforcement action directly against contractors who negligently install or maintain fire protection systems. This should prove a useful tool in reducing the number of false alarms resulting from faulty equipment. False alarms are extremely costly in terms of both time wasted by the fire service and in lost business. The Home Office's 2001 report on the economic costs of fire estimated the cost to the fire service of responding to a false alarm as £372. In the year 2000 there were 228,266 false alarms due to faulty equipment. Reductions of 5, 10 or 15% might therefore result in savings to the fire service of £4.16 million, £8.32 million or £12.48 million respectively (see table in Annex A attached).

The savings for business in the reduction in false alarms is difficult to calculate. The cost per hour of a false alarm in a large department store has been estimated at between £30,000 and £50,000. Costs for a small business or a self-employed person may be comparatively low in monetary terms. This will need to be quantified in discussion with employers and others. However, we believe that although the actual monetary cost may be low the proportionate cost compared to turnover and profit may well be far more significant than for a larger business.

At present, we assume from Small Business Service statistics that the average company has 7 employees. We further assume that the average hourly wage will be in the region of £10 – which implies an hourly labour cost of £13.3. This gives an hourly labour cost of £90 per firm. Taking it that each false alarm lasts for about one hour of the firm's time the savings arising from a reduction in the incidence of false alarms of between 5 and 15 would appear to be in the region of £1m – £3m pa. Actual costs would be likely to exceed this estimate because it takes no account of lost sales and down time resulting from the false alarm. Further work, including survey will be carried out in order to identify a global figure for the full regulatory impact assessment – in particular in relation to benefits for the self-employed and the voluntary sector.

Option 3

Reduction in number of fire safety regimes

In addition to the benefits outlined for Option 2, this would simplify the law further. There will be no alteration to the level of fire service resources dedicated to fire safety, so the total number of fire safety inspections should remain unchanged. As mentioned above, fire services will be encouraged to develop programmes for inspection based on the assessment of the risk presented by different uses of buildings rather than concentrate, as is mostly the case now, on buildings requiring fire certificates under the Fire Precautions Act 1971.

The outcome of this is difficult to predict on a national basis since the intention is that each of the 50 fire authorities will have greater freedom to enforce in accordance with its own local priorities. There may be a shift in the burden from one business sector to another or, since many of the premises identified as higher risk are residential (hospitals, hostels, houses of multiple occupation, care homes), a shift to these types of premises from the business sector, in particular large offices, which are low risk. An informal survey of six fire brigades showed that there might be a 20% to 30% reduction in the number of re-inspections of premises designated under the Fire Precautions Act. Essentially the burden should transfer from businesses that comply with the law and operate safe premises to those who do not. This will allow that the activities of enforcing authorities will, over time address the risks to the public that property in the enforcing authorities' areas present.

This itself can reasonably be expected to have a positive impact on public safety generally and in particular reduction in fires, their severity and the consequent impact on the businesses involved and the public at large.

It might be assumed that the greatest benefit to business would be felt in hotels and licensed premises where, at present, fire authorities enforce the Fire Precautions Act 1971, the Fire Precautions (Workplace) Regulations, and are also consulted by licensing authorities in respect of separate fire safety requirements imposed as conditions of licences. It could reasonably be expected that a rationalisation of the legal requirements should lead to a reduction in the number of inspections for these premises. The small survey of fire brigades confirmed that currently the fire service tends to react to notifications and consultations by the licensing authority. A risk-based approach would mean that the frequency of inspection would be determined by the severity of risk. It may then be that, when consulted by the licensing authority, the fire authority might not automatically inspect if it were satisfied from recent inspections that the fire precautions were satisfactory.

In 2001/02 the fire service carried out 20,205 re-inspections of hotels and licensed premises. The average time taken for re-inspections is 3.5 hours including travelling and writing the report. Assuming that the inspector spends two hours on the premises and that the cost to the business is £12 per hour the total cost of re-inspections of these premises could be estimated at £484,920. A 5% to 10% reduction in the number of inspections could therefore produce a saving of £24,246 to £48,492.

Simplification and clarification

Reduction in the number of fire regimes impacts not only for business and industry in areas well loaded with fire provisions – as in the example above – but also for other sectors. Taking the self-employed and the voluntary sector, they can be subject to a number of requirements relating to safety and consequently fire safety. Some of these (such as licensing) will currently specify fire safety as a requirement. Others – such as health and safety duties of care and civil liability legislation – will merely infer it. This is not helpful to embryonic, micro and small businesses or the voluntary sector and can be improved upon to their benefit.

We believe that unpacking of general duties and clarification of existing regimes by removal of fire safety requirements (or by referring to the new fire regime) can be of great assistance. Repackaging fire safety as proposed will result in an identifiable goal and an achievable means of reaching that goal. How this may be quantified is difficult to assess. However, we shall be seeking views on this as part of further development of the full Regulatory Impact Assessment.

Compliance costs for business, charities and voluntary organisations

5.(i) Business sectors affected

The Fire Precautions (Workplace) Regulations already apply to virtually all places where people are employed to work. The new Fire Safety Order would cover virtually all workplaces and places to which the public has access other than single private dwellings.

Essentially, it will apply to all places used for the purposes of a business or other undertaking or activity that gives rise to risks to persons using that place. The new Order would therefore specifically apply fire safety law for the first time to certain groups not already covered including certain premises used by the self-employed (but not where they work at home) and the voluntary sector.

These people already owe duties of care to other persons and will be responsible, under health and safety legislation and other statutory duties, for the safety of people on their premises. They should already be assessing risks which should include the assessment of the risk from fire. In that sense, the new Order will add little or no additional requirements to existing law, but we accept that some people, who have not met the requirements imposed on them by existing legislation might incur expenditure to comply with the new Order.

Annex B sets out, by category, the total number of premises known to the fire service. This includes some residential accommodation which will not attract the full provisions of the new Order requiring risk assessments to be carried out.

The new Order will contain a power for enforcing authorities to require the maintenance of fire safety facilities which have been provided under Building Regulations for the use and protection of the fire service (such as fire-fighting shafts and dry-riser mains). There will also be provision requiring the maintenance of fire protection systems in the common areas of houses of multiple occupation. No central record is kept of the number of buildings with such facilities or how well they are maintained at present. We shall attempt to quantify the compliance costs for these provisions for the full regulatory assessment.

Other than these residential premises, virtually all the premises listed are already subject to the Fire Precautions (Workplace) Regulations (there may be some care homes where there are no employees). The new Order should not impose significant new burdens on the operators of these premises.

5.(ii) Compliance costs for a typical business

As we have said, the new Order should not impose additional fire safety requirements for most businesses and so the policy costs will be limited mainly to those businesses that are not complying with the existing legislation. There will, however be some implementation costs. We shall be producing user-friendly guidance targeted at different user groups and business sectors. This will explain the principles of risk assessment and set out the requirements of the new Order. It will also provide advice on fire precautions appropriate to each sector. For the typical business which is already complying with the existing law, the compliance costs should be no more than purchasing the guidance (which would also be available on the Internet) and reading it. Assuming a purchase price of £10 for the guidance and one hour for the employer to read it at £12 per hour, the compliance cost for this business should be £22.

For the business which has not complied with the existing law, we assume that the compliance cost will be comparable to that we gave for compliance with the Regulations. We allowed one and a half hours for the preparation of a risk assessment (with an allowance for inflation, this would now be £18) and 20 minutes training (say £4).

Statistics produced by the Small Business Service show that in 1999 there were £1,226,165 employers in England and Wales. the vast majority of these had 1 to 4 employees (878,655), 5 to 9 employees (180,520), or 10 to 19 employees (97,810). The cost of compliance for a company which did not comply with the existing Workplace Regulations with 1 to 4 employees would be between £44 and £56. That is:

Purchase of guidance	£10
Reading guidance	£12
Preparing risk assessment	£18
Staff training (1-4 staff)	£4-16
Total	£44-56

The costs for companies with 5 to 9 and 10 to 19 employees would be £60 to £76 and £80 to £116 respectively. The average number of employees in companies with 1 to 19 employees is four. So the average cost for a non-complying company is £56.

5.(iii) Total compliance costs

Costs on employers

As indicated in section 4.(ii), we assume, using the data obtained from the CACFOA survey on compliance, that, overall, approximately 60% of workplaces already comply, and that the making of the Order and accompanying publicity will increase awareness, and consequently compliance, to 75 or 85%.

The CACFOA survey indicated that a higher percentage, around 65%, of premises with a fire certificate under the Fire Precautions Act (normally larger premises) complied. This is to be expected since fire authorities currently concentrate their resources on inspecting these premises. By the time the Order comes into force the Fire Precautions (Workplace) Regulations would have been in force for over four years. Since most certificated premises would have been inspected over that period of time it is reasonable to assume that awareness of, and compliance with, the Regulations would be as high as could be expected. It is also reasonable to assume a similar level of compliance in other large premises, such as hospitals and schools which are monitored by other authorities.

The Small Business Service statistics show that in 1999 there were 69,180 companies employing 20 people or more. In many cases, however, these companies will operate many different premises. We also need to take account of public sector premises such as schools and hospitals. To assess total compliance costs for larger organisations we therefore consider it appropriate to use the number of larger workplaces known to the fire service in 2000/01 as shown in Annex B. This was 368,000. Given our assumption above that these premises will be largely complying with the existing Regulations, the total compliance cost for larger enterprises will be £8,096,000 (368,000 x £22).

The CACFOA survey indicated that in non-certificated (smaller) workplaces the level of compliance was around 50%. Therefore, to achieve the increased levels of compliance an additional 35% of workplaces will need to meet the requirements. As indicated above, there are 1,156,985 companies employing between 1 and 19 people. A small percentage of these may have no workplaces while some may be spread over a small number. It therefore

seems reasonable to take this figure as the number of workplaces which will need to comply. A number of these companies will be located in larger office blocks which are subject to a fire certificate and are therefore likely to be complying with the existing Regulations. We therefore think it reasonable to use the number of smaller workplaces (which includes non-certificated offices and shops) known to the fire service as shown in Annex B, 634,377, as the number of workplaces where the level of compliance is around 50% according to the CACFOA compliance survey.

The total cost of purchasing and reading of guidance for smaller enterprises is therefore estimated at £25,454,000 (1,157,000 employers at £22 each).

If the level of compliance across 634,377 workplaces is to rise from 50% to 85% the additional costs of compliance will apply to 35% of those workplaces, that is, 222,032. The average number of employees in these companies is four. The additional cost per non-complying business (preparation of risk assessment and training of employers), is £34. Consequently the additional costs for companies which had not complied with existing legislation is £7,549,088 (222,032 x £34).

The total cost of compliance for smaller enterprises will therefore be:

Purchasing and reading of guidance:	£25,454,000
Additional costs of compliance:	£7,549,000
Total:	£33,003,000

The self-employed

The new Order will apply general fire safety legislation for the first time to workplaces where there are no employees.

The statistics produced by the Small Business Service indicate that in 1999 there were 2,132,725 enterprises with no employees (sole proprietorships and partnerships) in England and Wales. The new Order will not apply to people working at home. The number of dedicated workplaces used by the self-employed but not by employees is difficult to establish. The Small Business Service figures for 2000 show a total of 2,591,775 enterprises with no employees in the UK. These figures are not divided into England and Wales, Scotland and Northern Ireland but are broken down into specific types of employment. In each of these types we have made an assumption of the number of enterprises which are likely to operate their own premises. These figures are shown at Annex C. The total number is 1,069,900. Reducing this on a pro rata basis to give a figure for England and Wales produces a figure of 973,600.

By definition these will be small, relatively low risk premises that will already be subject to health and safety legislation which would cover process fire safety (fire risks caused by work processes). We therefore believe that the financial burden on such businesses will be limited to the purchasing and reading of the guidance. One exception to this would be hotels and restaurants. There are 53,900 such establishments without employees and for these it would seem reasonable to add on £18 for the preparation of the risk assessment. Accordingly, the total cost to the self-employed would be £22,389,400 (973,600 x £22 plus 53,900 x £18).

The voluntary sector

Where voluntary sector organisations are employers, they will already be subject to the Fire precautions (Workplace) Regulations and will be subject to the new Order. Although we might expect costs for this sector to arise on the same basis as for the self-employed, we have not as yet quantified all effects for this sector. This will form part of the litmus testing exercise we will be carrying out and we would welcome views of consultees.

In the above estimates we have assumed a scenario whereby guidance is purchased and read by all persons in all the undertakings that are listed in central statistics. In reality this is unlikely. We might reasonably discount cases of purchase and reading of guidance where this would occur regardless of the new fire regime. Sales figures for central guidance documents over the last 12 months were in the region of 46,000 per annum at an average cost of £10. Figures are not available for the purchase of guidance documents sold by the private sector but we might assume an additional 50% of the central figure, (23,000) It is to be assumed that those who purchase these guides also read them and so these costs could be discounted from the total figures. This would give a further sum to be discounted of £1.52m $(69,000 \times £10) + (69,000 \times £12)$. However, for the present exercise we will assume the non-discounted figure.

6. Consultation with small business

The Federation of Small Businesses has been represented on the working group which has developed these proposals. We shall conduct further targeted consultation, through the Small Business Service, including the Litmus Test, during the consultation period and before drafting the Order.

7. Competition assessment

We have applied the competition filter test in accordance with the Office of Fair Trading's guidelines for competition assessment. In doing so we have considered the effect of the Order across business sectors in England and Wales and have had specific regard to the fire safety industry.

The view we have formed is that the Order will not affect competition in the broader business sector. The Order would assist in removing barriers to establishing business by removing confusion and uncertainty over legal requirements. For the fire industry, the Order would not affect standards of manufacture of fire related safety products or the competition within this market. However we do take the view that the Order may assist in opening up competition in the services sector through the possibility of employment of competent persons to fulfil obligations not hitherto complied with including the carrying out of risk assessments and the installation, maintenance and testing of fire precautions.

8. Identify any other costs

None.

9. Results of consultation

The proposals for reform have been developed by a working group set up as a sub-group of the Fire Safety Advisory Board. The group included representatives of the fire service, the Local Government Association, Government Departments, the fire industry, the CBI, the Federation of Small Businesses and the British Hospitality Association.

10. Summary and recommendation

Option 3 maximises the benefit to business, addressing the confusion of the current legislative arrangements where it is at its greatest – where general fire law overlaps with other legislation enforced by different enforcement authorities. The Better Regulation Task Force are particularly supportive of the rationalisation of fire safety legislation as it applies to hotels and restaurants.

It also maximises the benefits in terms of the efficient use of fire service resources since fire authorities will more often be enforcing fire safety law in their own right, rather than as consultees.

Option 3 represents the recommendations of the Fire Safety Advisory Board, established to bring a strategic approach to fire safety issues, and including representatives of outside trade and industry.

Summary of Costs and Benefits

	Benefits	Policy Costs	Implementation Costs
Business (employers)	<p>£1.7m pa – ending of requirement for fire certificates.</p> <p>£6.6m – £33.2m pa – reduction in fires</p> <p>£1m – £3m pa reduction in false alarms</p> <p>Clarification and simplification of requirements and responsibilities (to be informed by consultation)</p>	<p>Preparing risk assessments: £7.5m (= £1.09m pa)</p>	<p>Purchase & reading of guidance: £8m – larger companies – £25.5m – smaller companies (equal to £4.5m pa)</p>
Self-employed	<p>£38.5m – £76.6m pa – reduction in fires</p> <p>£[to be quantified] reduction in false alarms</p> <p>Clarification and simplification of requirements and responsibilities (to be informed by consultation)</p>	<p>Preparing risk assessments: £970k (£132k pa)</p>	<p>Purchase & reading of guidance: £22.4m (= £3m pa)</p>
Voluntary Sector	<p>£0.55m – £1.1m pa – reduction in fires</p> <p>£[to be quantified] reduction in false alarms</p> <p>Clarification and simplification of requirements and responsibilities (to be informed by consultation)</p>	<p>Preparing risk assessments: To be quantified on consultation</p>	<p>Purchase & reading of guidance: £570k (= £80k pa)</p>
Fire authorities	<p>£4.2m – £12.5m pa reduction in false alarms</p>	–	–

From the above table and the preceding commentary it can be seen that the total cost for all sectors affected is estimated at £63,488,400. If this is compared to the total benefits for both the 5 and 10% scenarios for reductions in numbers of fires we derive benefit cost ratios for each scenario. With an estimated 5% reduction in the number of fires as a result of this measure (£55m), along with the lower estimates for the benefits of reduced false alarms for both business (£1m) and the fire service (£4.2m), and the £1.7m from ending the requirement for fire certificates we have total benefits of **£62,366,500**. Comparing the two we have a benefit-cost ratio of slightly less than 1:1, i.e. the benefits approximately equal to the costs.

Doing the same for the 10% scenario (£110m) and the upper estimates for each of the other benefits listed above, we get a total benefit figure of £128m and a **benefit cost ratio 2:1**.

11. Enforcement, sanctions, monitoring and review

The new Order will be enforced, in the main, by fire authorities, although the Secretary of State will be empowered to appoint other enforcing authorities for particular uses of premises. We expect fire authorities to enforce the law in accordance with the Cabinet Office's Enforcement Concordat. The new Order should also include a duty on the fire authority to institute, develop and maintain an enforcement programme which would include details of how the authority might determine the frequency with which it will inspect premises to which the Order applies in order to monitor and encourage compliance with the law. In developing such a programme the authority would have to take into account all the information available about the use and associated fire risks in the premises in its area. All fire authorities currently have inspection programmes and some are already developing risk-based systems. We do not, therefore, anticipate that this duty will constitute a significant new burden on authorities.

RIA ANNEX A

Reduction in false alarms due to faulty apparatus						
	1999 Levels	1999 Total Cost	2000 Levels	2000 Total Cost		
	219,223	£81,550,956	228,266	£84,914,952		
5% reduction	208,262	£77,473,408	216,853	£80,669,204		
10% reduction	197,301	£73,395,860	205,439	£76,423,457		
15% reduction	186,340	£69,318,313	194,026	£72,177,709		
Benefits:					2 yearly average benefit	
5%	10,961	£4,077,548	11,413	£4,245,748	£4,161,648	
10%	21,922	£8,155,096	22,827	£8,491,495	£8,323,295	
15%	32,883	£12,232,643	34,240	£12,737,243	£12,484,943	

RIA ANNEX B

Premises known to fire brigades (2000/01)

Larger workplaces

Hotels requiring fire certificates	26,205
Factories requiring fire certificates	43,814
Offices requiring fire certificates	68,211
Shops requiring fire certificates	22,091
Railway premises requiring fire certificates	144
Sub-surface railway premises	157
Hospitals	3,211
Schools (inc boarding)	35,821
Sports centres	2,375
Sports grounds and stands	606
Theatres, public entertainments etc	26,259
Other non-residential	139,106
Total:	<u>368,000</u>

Smaller workplaces

Factories	111,559
Offices	139,286
Shops	241,797
Residential care establishments	28,355
Occasional public entertainment	15,605
Licensed premises	97,775
Total:	<u>634,377</u>
Total workplaces:	<u>1,002,377</u>
Houses in multiple occupation	86,829

RIA ANNEX C

Estimate of enterprises with no employees but operating own premises	
Manufacture of food products and beverages	4,000
Manufacture of textiles	150
Manufacture of wearing apparel	1,500
Manufacture of leather and leather products	800
Manufacture of wood and wood products except furniture	10,000
Manufacture of pulp, paper and paper products	1,500
Publishing, printing and reproduction of recorded media	22,000
Manufacture of coke, refined petroleum products and nuclear fuel	100
Manufacture of chemicals and chemical products	5,000
Manufacture of rubber and plastic products	8,000
Manufacture of other non-metallic mineral products	2,200
Manufacture of basic metals	1,800
Manufacture of fabricated metal products, except machinery and equipment	26,000
Manufacture of machinery and equipment not elsewhere classified	11,000
Manufacture of office machinery and computers	2,000
Manufacture of electrical machinery and apparatus not elsewhere classified	9,000
Manufacture of radio, television and communication equipment apparatus	3,000
Manufacture of medical, precision and optical instruments, watches and clocks	2,500
Manufacture of motor vehicles, trailers and semi-trailers	3,000
Manufacture of other transport equipment	8,000
Manufacture of furniture; manufacturing not elsewhere classified	20,000
Recycling	1,300
Electricity, gas, steam and hot water supply	50
Sale, maintenance and repair of motor vehicles; retail sale of automotive fuel	45,000
Wholesale trade and commission trade, except of motor vehicles	60,000
Retail trade, except of motor vehicles; repair of personal and household goods	160,000
Hotels and restaurants	53,900
Land transport; transport via pipelines	100,000
Water transport	2,000
Air transport	100
Supporting and auxiliary transport activities; activities of travel agencies	18,000
Post and telecommunications	19,000
Financial intermediation, except insurance and pension funding	2,000
Insurance and pension funding, except compulsory social security	500
Activities auxiliary to financial intermediation	2,000
Real estate activities	50,000
Renting of equipment without operator and of personal and household goods	7,000
Computer and related activities	65,000
Research and development	4,500
Other business activities	74,000
Education	30,000
Health and social work	130,000
Sewage and refuse disposal, sanitation and similar activities	5,000
Activities of membership organisations not elsewhere classified	9,000
Recreational, cultural and sporting activities	30,000
Other service activities	60,000
	1,069,900

ANNEX F

Response Form

Response form for the consultation paper on the Reform of Fire Safety Legislation

Respondent Details	Please return by 22 November 2002 to:
<p>Name: Organisation:</p> <p>Address:</p> <p>Town/City: County/Postcode: Telephone Fax: E-mail:</p>	<p>Mark Coram Fire Safety Reform Consultation Office of the Deputy Prime Minister Eland House Bressenden Place London SW1E 5DU</p> <p>E-mail: fire.safetyreform@odpm-dft.gsi.gov.uk.</p>

Tick this box if you are requesting non-disclosure of your response.

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?

Comments:

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph, 2.10 and 2.11 above?

Comments:

c) The proposals impose a number of new burdens. Your views on whether the tests of proportionality, fair balance and desirability are satisfied, as explained in paragraph 2.12 above, are sought

Comments:

d) Do you have any views on the costs and savings as identified in chapter X of this consultation document and as addressed in the interim Regulatory Impact Assessment attached at Annex E?

Comments:

e) Are there any other benefits that would be gained from these proposals?

Comments:

Set out below are the issues identified throughout the document on which we should welcome views. Please feel free to enter your views in respect of each in the space provided if you wish.

We would welcome views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to enjoy.

We would welcome views as to our proposals to remove the requirement for fire certificates but to extend the application of existing risk assessment-based legislation to non-employees.

We would welcome views about the amendment, repeal or revocation of the legislation listed in Annex A. We should also be interested to know if consultees consider that any legislation, not listed in Annex A, should be repealed, revoked or amended as part of the reform.

We would welcome comments on the proposal to re-state and modify the Regulation-making powers contained in the Fire Precautions Act.

We would welcome views on the proposed definition of the responsible person, including whether we should continue to use the definition of “owner” contained in the Fire Precautions Act. We would also welcome views on our proposals to allow enforcing authorities to take action against contractors.

We would welcome views on our proposals to extend the scope of fire safety legislation to the self-employed and voluntary sector.

We would welcome views on the proposed application of the new Order.

We would welcome views as to our proposals to incorporate the provisions of the draft Dangerous Substances Regulations into the proposed Order and to extend the requirement to mitigate the detrimental effects of a fire to all premises covered by the Order.

We would welcome views on the proposed risk assessment requirements.

We would welcome views on the suggested principles of prevention to be applied bearing in mind the need to ensure full compliance with EU legislation.

We would welcome views on the proposed requirements for fire safety arrangements.

We would welcome views on the proposed requirements for the elimination or reduction of risks from dangerous substances bearing in mind the need to ensure full compliance with EU legislation.

We would welcome views on our proposal to clarify the purpose of fire-fighting equipment so that it may be considered as a possible means of reducing a risk and as means of providing protection and for providing assistance to others. We should be particularly interested to know whether consultees could identify any circumstances whether this might significantly increase costs.

We would welcome views on the requirements for emergency routes and exits bearing in mind the need to ensure full compliance with EU legislation.

We would welcome views on our proposal to extend the requirement to maintain fire protection equipment.

We would welcome views on the proposed requirements in respect of safety assistance.

We would welcome views on the proposed requirements in respect of procedures for serious and imminent danger.

We would welcome views on the proposed requirements in respect of the provision of information.

We would welcome views on the proposed requirements in respect of persons working in host employers' or self-employed persons' undertakings.

We would welcome views on the proposed requirements in respect of capabilities and training.

We would welcome views on the proposed requirements in respect of the general duties of employees at work.

We would welcome views on the guidance that should accompany the new Order. In particular, who should it be aimed at and what form should it take? We welcome views on whether any part of the guidance issued under the new Order should have some form of legal status.

We would welcome views on our proposals as to how the new Order will work alongside licensing regimes, and in particular whether they would help maintain necessary positions, strike a fair balance between the interests of those affected and the public interest and would help make the proposed new regime desirable as a whole.

We would welcome views on our proposals as to how the new Order will work alongside housing law, and in particular whether they would help maintain necessary protections, strike a fair balance between the interests of those affected and the public interest and would help make the proposed new regime desirable as a whole.

We would welcome views on our proposals in respect of the protection of animals and in particular whether they would help maintain necessary protections, strike a fair balance between the interests of those affected and the public interest and would help make the proposed new regime desirable as a whole.

We would welcome views as to the appropriate enforcing authorities for the new Order.

We would welcome views on our proposal that the question of Crown immunity should not be addressed separately in this reform. We would also welcome views on whether the proposed flexibility, and on whether the negative resolution mechanism would be the appropriate vehicle for extending the fire safety regime to cover premises currently subject to Crown immunity. We would also welcome views on which other elements of the proposed fire safety regime would benefit from future flexibility over and above the proposal to re-state the regulation-making power in the Fire Precautions Act.

We would welcome views on our proposals for the form of enforcement notices, and whether Ministers should issue a code of practice for enforcing officers.

We would welcome views on our proposals in respect of alterations notices. Should the enforcing authority be required to approve risk assessments within a certain time? Do the proposals meet the requirements of proportionality, fair balance and desirability?

We would welcome views on the proposals for prohibition notices.

We would welcome views on the proposed powers of inspectors in respect of the enforcement of fire safety legislation.

We would welcome views on the proposed offences under the new Order.

We would welcome views on our proposals for requiring inspectors to prepare reports of inspections.

We would welcome views on our proposals in respect of appeals, and in particular whether the magistrates' court remains the proper avenue of appeal.

We would welcome views on our proposals for a duty to institute, develop and maintain an enforcement programme. We should be interested to know if consultees think the programme should be published.

We would welcome views as to whether our proposals will offer sufficient reassurance to the public as to their safety from fire.

We would welcome views as to whether fire authorities should be able to charge for advice or for any other service provided in relation to fire safety. Any charge would represent a burden and would have to meet the requirements of proportionality, fair balance and desirability, and we would welcome your views on those specific issues if you think that the authorities should be able to charge for advice and other services.

We would welcome views on our proposed new powers for fire authorities to investigate fires and to take away articles and substances.

We would welcome views on our proposal to introduce a duty on fire authorities to promote community fire safety. Do consultees consider that the absence of a duty is a disincentive to fire brigades to carry out this work?

