

ANNEX F

Response Form

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

Respondent Details

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Please return by 22 November 2002 to:

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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?

No

Comments: We have concerns about the removal of fire certification

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: Yes, but

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: Yes but we feel that the cost of risk assessment as stated in the document is seriously underestimated

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: The cost savings indicated are ambitious and do not appear to be realistic, where is the validation of the figures.

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

Comments: Without the guidance documents it is difficult to make further comment

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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 restate our comments made above the removal of fire certificates would only be desirable if what is put in its place will provide the same level of safety. Please see our detailed comments attached.

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 feel that this is to be effective then statutory requirement for inspections of premises are required to ensure the same level of protection as currently enjoyed. Also how do you propose to achieve a commonality of view with risk assessments without specific guidance this can be very subjective and open to challenge.

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.

If any of the acts and regulations listed are to be replaced we need to be sure that the proposed order will bring in something that will replace it. The list itself is very long and we suggest that it is looked at very closely. For example a number of the local act contain provisions that require sprinkler protection of buildings repeal of these with no equivalent provision in the now document would be wrong.

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

As long as what is proposed is equal to or better than what is currently in the Fire Precautions act we have no objections. Please see the comments on individual clauses attached.

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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.

It is not clear in the document who the responsible person actually is, this needs to be clarified for example the Health and Safety at Work Act is very clear on this point. We would propose that it is made very clear in the regulations who in the “body corporate” is responsible/culpable. If Third party conformity cannot become a legal requirement it should be a legal defense.

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

We are generally in agreement with this however, there is a misconception in 4.18 the self employed do employ people. We support the proposals to extend the law to cover the voluntary sector. The need for clarification of the position of volunteers and others at work is long overdue. The issue goes well beyond charity shops as many schools, care homes, hospitals, museums, galleries, churches and historic buildings ‘employ’ volunteers in a number of capacities which would be defined as employment save that no salary is paid. Consider also the position of the various preserved railways and similar establishments which rely on volunteers. At least two UK airfields use volunteers to provide fire and crash rescue.

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

We have some concerns about the extent of the proposed exemptions in 4.22(c) as there have been previous unresolved issues with regard to the safety and means of escape in cases involving floating night clubs and restaurants. The definition needs to be inclusive rather than exclusive and must include all preserved vessels however flagged or moored.

We would suggest that the exclusion for domestic staff should not apply to dwellings/residences which are open or accessible to the public.

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 agreed with the proposals provided that they incorporate the provisions correctly.

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We would welcome views on the proposed risk assessment requirements.

We note that the consultation document had more than one author there is a need to keep the terminology consistent throughout the document. We are concerned that there is no definition of risk assessment, who will ensure that all risk assessment are the same. There needs to be strong guidelines indicating levels of competence and acceptable qualifications. For example the Health and Safety at Work Act provides this guidance.

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 generally agree that the principles outlined are adequate in their provision.

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

We find these generally acceptable, But we feel that the use of the term “employees” throughout the document may inadvertently limit the application of the order.

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 propose that the classifications of dangerous substance be reviewed and a decision should be taken to see how many could be eliminated based on the risks, we wonder whether this is a matter for 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

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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 welcome this but would draw your attention to the detailed comments for example in 4.55 and elsewhere in the document there is no mention of passive fire protection.

We feel that it will increase costs but this not necessarily detrimental especially if it goes some way to stop the trend of guidance being offered that recommend that first aid fire fighting equipment is not used or installed.

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 welcome the proposals, in the light of 9/11 the guidance could be significantly enhanced for tall buildings. We suggest the consideration of 3D evacuation (i.e. evacuation from roofs) or the use of fire floors (CF Hong Kong)

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

We fully support the proposals, but they are unlikely to be effective without enforcement and third party assessment. The section must also refer to the need for proper maintenance of passive fire protection measures, especially with regard to compartmentation.

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

If this is to work there needs to be a definition of a competent person and the appropriate codes of practice drafted. The definition of competence in 4.68 is too weak.

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

We find this generally acceptable.

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

We find this generally acceptable, but as stated earlier more information on passive protection is required.

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

See our detailed comments

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

We find this generally acceptable, but the guidance would benefit from a statement that a competent person should carry out the training. The duration of the time between training should be stated – drills and evacuations should be carried out at least yearly. Perhaps the word “appropriate” has been used too often.

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

We find this acceptable, but suggest the consideration of a new offence under the Order of “Recklessly or maliciously damaging fire protection equipment”

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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 ask who will be writing the guidance and if they are to have legal status then it should be at the same level as ACOPS under the Health and Safety at Work Act or the ADB.

We recommend that the Fire Safety Advisory Board should be directly involved in the drafting of any guidance at an early stage and not regarded as a “rubber stamp” the Board is a “broad church” and would provide considerable practical experience to the process.

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 find this generally acceptable.

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.

The fire industry is not really in a position to comment on this, however, we find it generally acceptable but by excluding domestic properties the Order will not go as far as possible in reducing fire deaths. Further we feel that fire safety law should cover the common parts of domestic buildings. In clause 4.113 HMO’s should be included.

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 feel that there is a case for a separate review of fire safety in the animal industry and so this should be taken out of this review process. The issue is very complex and cannot be adequately dealt with in a broad-brush approach.

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

We agree with the proposals.

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 strongly hold the view that “Crown Immunity” should not apply to fire legislation.

We would have more confidence in the system if Section 5.6 was made clearer - in particular we would prefer to see the Crown Premises Inspection Group as the ultimate arbiter of fire safety matters in Government premises. Where departmental bodies (such as the MoD Fire Service) are to be allocated this responsibility, their activities should be subject to audit and quality assurance verification by HM Fire Services Inspectorate.

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 agreed that enforcement notices are required but would question why Ministers should write the guidance

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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 believe that the wording of this section provides infinite possibilities for conflict, confusion and litigation. If a responsible person applies risk assessment principles, undertakes improvements or activities informed by the results of the risk assessment and then finds him/herself advised 'that the law has not been complied with' how is this to be resolved? Why should the risk assessment (which may have been undertaken by a well qualified scientist or engineer employed by major consultancy company) be deemed to be incorrect just because it comes to a different conclusion from the assessment undertaken by a relative junior fire brigade officer?

We would ask that the possible cost of this regime be investigated.

We would welcome views on the proposals for prohibition notices.

This is pivotal for making the whole process work. We would suggest the in 5.33 "might" is changed to "should"; indeed this change could be made throughout the document.

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

There needs to be some consideration of the time at which inspectors should be allowed to call for example "between 8am and 8pm"

Consider should be given to clarifying who is a fire inspector. We suggest that fire officers be issued with a warrant card similar to other offices with powers of entry such Police and HM Customs.

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

We generally agree with the proposals in this section, and in addition to the proposed new offence mentioned earlier, we propose that an offence be added regarding the wearing of a fire officer's uniform with the intent to deceive.

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

This is essential. How can the effectiveness of the regime be measured without reports? We also feel that there should be some clearly defined KPI's and a standardized format for the reports.

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 feel that the new regime is likely to see a greater number of appeals against judgments made, therefore the appeals process should be based in the County Courts. Also would it be appropriate for the Local Authority to fund the process of taking action in the courts?

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 consider that the removal of fire certification (in particular on hotels and boarding houses) will prove unpopular and will reduce public confidence in fire safety measures. We believe that there will be a public perception that the new regime, being less structured, does not guarantee the levels of safety presently enjoyed in public places.

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

It is unlikely that the public will understand the implications of the proposals, the public have currently an understanding of fire certificates for certain premises and will need to be reassured that what will replace them has a similar level of protection.

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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 believe that it is wrong in principle for a fire authority to charge for any service which is readily available from the private sector. The idea that an enforcing agency should also undertake consultancy work in the same area of activity is clearly unacceptable. We do accept that there may be cases where work beyond that immediately related to the submission of plans etc. is needed and in this case we believe that the correct response would be for the fire authority concerned to provide the enquirer with a list of consultants providing such a service.

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

These are long overdue and welcomed. We feel that clarification is required in who is responsible for investigating and enforcement with regard to arson, police or fire brigade. This, however, should be part of a separate review.

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?

If the brigades are to be responsible for this then it should be funded separately from their general duties.