



**Northern Ireland
Fire & Rescue Service**

FIRE SAFETY ENFORCEMENT POLICY

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VERSION CONTROL

This document is a dynamic document which will be amended at any time to improve the content and will be reviewed every three years. The document is maintained by the Prevention & Protection Department at NIFRS Headquarters.

Amendments are detailed as below:

No	Issued	Amendment	Prepared by	Reason for change
1	08/05/2012	New guidance document prepared and issued.	ACO (Safety Services)	New Policy
2	27/09/2012	Amendment to Paragraph 11.2	AGC (Community Development)	CFOA Guidance
3	22/12/2016	Full Policy review	GC Geoff Somerville	Policy Review

1 INTRODUCTION

This Policy details the procedures Northern Ireland Fire & Rescue Service (NIFRS) will follow when enforcing The Fire and Rescue Services (Northern Ireland) Order 2006 and The Fire Safety Regulations (Northern Ireland) 2010.

The overriding aim is to be fair and open and therefore this Policy provides guidance for auditors, businesses and members of the public to detail the aims and principles that will be applied.

All enforcement action will be taken in accordance with the principles of this Policy.

NIFRS aims to provide a consistently high quality service to the business community in relation to legislative fire safety requirement in accordance with the Enforcement Concordat published by the Better Regulation Unit of the Cabinet Office. In preparing this Policy, NIFRS has also considered the Regulators Compliance Code, Human Rights Act 1998, Data Protection Act 1998, and the Code for Prosecutors (Public Prosecution Service Northern Ireland).

2 AIMS AND OBJECTIVES

The aim of this Policy is to make Northern Ireland safer by reducing, as far as possible, the risks and social and economic cost of fires and other dangers by ensuring compliance with regulatory requirements.

NIFRS will adopt a proactive approach towards ensuring compliance by:

- helping and encouraging those it regulates to fully understand and fulfil their legal responsibilities more easily; and
- responding proportionately to non-compliance to avoid imposing unnecessary costs while taking firm action against those who fail to comply with the law.

The objectives of this Policy are to:

- create a safe and healthy environment in which to live;
- protect the public;
- fulfil NIFRS' statutory duties;
- improve the safety of NIFRS staff;
- encourage economic growth through fair and effective regulation; and
- provide guidance for NIFRS authorised enforcement officers.

3 SCOPE

The scope of this Policy is limited to the enforcement of:

- The Fire and Rescue Services (Northern Ireland) Order 2006; and
- The Fire Safety Regulations (Northern Ireland) 2010.

This Policy is written as a guide for officers, businesses and the general public, outlining the general principles as to how NIFRS will carry out its enforcement duties.

The Policy applies to all NIFRS dealings, whether formal or informal, with businesses or members of the public and may be supported by specific enforcement guidelines, procedures and documentation to help officers make enforcement decisions.

When applying this Policy, NIFRS recognises its duty to act in accordance with its statutory responsibilities including:

- Data Protection Act 1998;
- The Police and Criminal Evidence (Northern Ireland) Order 1989;
- Criminal Procedure and Investigations Act 1996;
- Human Rights Act 1998;
- Regulation of Investigatory Powers Act 2000; and
- Associated Codes of Practice.

4 PRINCIPLES

NIFRS will carry out fire safety enforcement on behalf of the NIFRS Board.

4.1 Proportionality

NIFRS will apply enforcement procedures in a proportionate manner in consideration of the public interest. A breach of statutory responsibilities will not necessarily result in a decision to take enforcement action or prosecute.

NIFRS will be proportionate and will endeavour to minimise the cost of compliance for businesses by ensuring that any action taken, or advice offered, is proportionate to the risk. NIFRS will take particular care to work with small businesses and organisations so that, where practicable, they can meet their legal obligations without unnecessary expense.

In order to minimise the costs of compliance, NIFRS will take into account the circumstances of each case including:

- risk to the public or the environment;
- seriousness and consequences of the breach;
- attitude and actions of the offenders; and
- history of any previous incidents or breaches of the law.

4.2 Consistency

NIFRS will apply a consistent approach to enforcement and advisory functions.

Consistency of approach does not mean uniformity; it means taking a similar approach in similar circumstances to achieve similar goals. NIFRS will therefore carry out its duties in a fair, equitable and consistent manner. Auditors are to exercise their professional judgment to deal effectively with specific matters and will adhere to published guidance to promote consistency. NIFRS will liaise with other authorities and enforcement bodies, regionally and nationally, to achieve co-ordination and locate best practice. NIFRS will determine the appropriate action to take, having considered the circumstances of the case and any legal requirements.

The implementation and effectiveness of this Policy will be monitored by NIFRS Headquarters Legal Team.

4.3 Standards

NIFRS will carry out its enforcement and advisory functions efficiently and staff will identify themselves by name. NIFRS will apply published fire safety standards and provide advice on request.

NIFRS will adopt and adhere to policy and guidance issued by the Department of Health, Department of Communities and Local Government (CLG), the Chief Fire Officers' Association (CFOA), and national and European accepted standards. National and local targets for the quality of delivery of service will be incorporated into procedures.

4.4 Openness and Transparency

NIFRS will be open and transparent and will provide information and advice in plain language on the standards that apply.

NIFRS will be clear about its working practices, including any charges that it sets when consulting businesses, voluntary organisations, charities, consumers and workforce representatives.

NIFRS will help those responsible (the appropriate person) for complying with the legislation to understand what is expected of them and what they should expect from NIFRS. NIFRS will distinguish between statutory requirements and advice or guidance in respect of what is desirable, but not compulsory, to achieve compliance with the legislation.

4.5 Helpfulness

NIFRS will be helpful and courteous in the delivery of its services.

NIFRS supports the principle that prevention is better than cure and therefore will actively work with businesses, especially small and medium sized businesses, to advise and assist with compliance. NIFRS will provide contact

points and telephone numbers for further enquiries and will encourage businesses to seek advice. NIFRS will also strive to co-ordinate its services effectively to minimise unnecessary overlaps and time delays.

NIFRS may raise awareness of statutory requirements and promote compliance through a range of methods including the provision of compliance guidance, direct contact with staff, education programmes, publicity campaigns and online guidance.

4.6 Fairness and Equality

NIFRS will take steps to ensure that it acts in an impartial and fair manner in accordance with NIFRS equality strategy and policies.

NIFRS has an approved Equality Scheme and is committed to fulfilling its responsibilities under Section 75 of the Northern Ireland Act 1998. Therefore, any decision regarding enforcement will be made with impartiality and shall not be influenced by the religious beliefs, political opinion, racial group, age, gender, marital status or sexual orientation of any alleged offender, complainant or witness.

4.7 Accountability

NIFRS is accountable to the public for its actions and has policies and standards against which it can be measured, with an effective and easily accessible mechanism for dealing with comments and complaints.

4.8 Professional Staff

NIFRS will make adequate arrangements to provide effective enforcement services by ensuring that:

- sufficient numbers of officers are employed who are adequately qualified, trained, experienced and competent to carry out their duties;
- all enforcement actions are taken by officers who have been specifically authorised in accordance with the relevant legislation; and
- all investigations are carried out in accordance with The Police and Criminal Evidence (Northern Ireland) Order 1989 and relevant Codes of Practice.

Specific enforcement guidelines, procedures and documentation may be developed to support officers making enforcement decisions and to ensure compliance with all relevant statutory codes of practice and official guidelines.

4.9 Enforcement Management Model

All staff who make enforcement decisions are required to follow the principles and guidance in the 'Enforcement Management Model' (EMM) issued by The Health and Safety Executive.

5 INTER-AGENCY LIAISON

NIFRS will, where appropriate, work with other public bodies, individuals and organisations to deliver effective enforcement in line with this Policy. Where other Health and Safety enforcing authorities may have a regulatory interest in particular premises, details will be forwarded to the appropriate agency. For example, if apparently dangerous conditions or practices (not related to fire) are noted in a workplace, NIFRS will forward details to the Health and Safety Executive.

Where NIFRS and another law enforcement body both have the power to investigate and/or prosecute, NIFRS will liaise with that other body to make sure that any action taken is co-ordinated so as to ensure that the most effective result is obtained.

6 LEGISLATIVE ENFORCEMENT

6.1 Selecting Premises for Audit

NIFRS will focus on premises that constitute the most serious risk to life and to do this, NIFRS will operate a risk based re-inspection programme to identify high risk premises.

NIFRS will maintain a management system that will identify and assess the risks within premises/workplaces and the community and allocate resources to carry out inspections accordingly.

Where enforcement action is necessary, NIFRS will identify the person responsible for creating the risk and the person or persons who are best placed to control it. This may be the owner, occupier, employer, manager or another appropriate person. NIFRS will seek compliance and may take action against those regarded as primarily in breach of the legislation.

6.2 Providing Fire Safety Advice

Educating, informing and advising appropriate persons about their duties under fire safety legislation will form a fundamental element of our enforcement regime.

NIFRS will fulfil its obligation under Article 4 of The Fire and Rescue Services (Northern Ireland) Order 2006 (The Order) to provide information, publicity and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire; and the giving of advice, on request, about how to prevent fires and restrict their spread in buildings and other property; and the means of escape from buildings and other property in the event of fire.

6.3 The Appropriate Person

Where enforcement action is necessary, NIFRS will identify the person responsible for creating the risk and the person or persons who are best placed to control the risk. NIFRS will refer to this person as the appropriate person. This may be the owner, occupier, employer, manager or another

appropriate person. NIFRS will seek compliance and may take action against those regarded as primarily in breach of The Order.

6.4 Securing Compliance

Where offences are observed, the actions and sanctions taken by NIFRS will aim to:

- secure compliance;
- change the behaviour of the offender;
- be responsive and consider what is appropriate for the particular offender and issue;
- be proportionate;
- restore any harm caused; and
- deter further non-compliance.

The actions that NIFRS chooses to take will depend upon the particular circumstances and the approach of the business or person to dealing with the breach. In determining the most appropriate action to take, officers will consider the circumstances of the breach.

In deciding what action to take, NIFRS will consider:

- the nature and seriousness of any alleged offence(s);
- the risk of death or serious injury;
- previous experience and record of compliance of the appropriate person;
- action taken to prevent any recurrence;
- the likely effectiveness of the various enforcement options;
- any explanation offered and the circumstances and attitude of the responsible person; and
- any statutory defence available.

Those premises/workplaces which are regulated by NIFRS can request advice on non-compliance without directly triggering enforcement action.

7 AUDIT OUTCOMES

NIFRS will seek compliance with the law by educating and informing, thus offering the appropriate person information and advice, both verbally and/or in writing. This will include an explanation as to why any specified work is necessary and a time period for completion. Legal requirements will be clearly distinguished from best practice or non-statutory fire safety advice.

The possible outcomes are:

Informal

- Broadly Compliant
- Notice of Deficiencies
- Action Plan

Formal

- Enforcement Notice
- Prohibition Notice
- Alterations Notice
- Simple Caution
- Prosecution

Before formal enforcement action is taken, (unless immediate action is required to reduce the risk to life or to prevent evidence from being destroyed), auditors will provide the person responsible with an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference.

7.1 Broadly Compliant

A compliance level of broadly compliant means that the premises risk rating is low or very low. The inspector has recorded a few minor deficiencies so the outcome should include verbal advice/agreement and information, and for the inspector to make a record of what advice was given.

NIFRS will not complete a follow up audit.

7.2 Notice of Deficiencies

In general, the premises risk rating is low, recording several less serious deficiencies with no previous history of other issues. Where the inspector has confidence in the management, a Notice of Deficiencies will apply, identifying those matters considered failures to comply and the steps considered necessary to remedy the failures.

NIFRS will not normally complete a follow up audit, but reserves the option to do so.

7.3 Action Plan

In general, the premises risk rating is medium with numerous less serious deficiencies and possibly a history of other minor issues. In addition, poor management, and the inspector has no confidence that matters will be addressed adequately. In most instances, the issue of a statutory notice or Action Plan will apply, identifying the nature of the corrective action needed. Where the situation remains unresolved after an agreed timeframe, an Enforcement Notice may follow.

NIFRS will always complete a follow up audit.

7.4 Enforcement Notice

Generally, the premises risk rating is high or very high where there is a clear breach of the law and serious deficiencies recorded with the requirement for comprehensive systems. There is also poor management, bad housekeeping, and lack of fire risk assessment and training records. There may also be a history of enforcement or informal action. The Enforcement

Notice will specify the problem and a clear remedy determined by the inspecting officer, although alternative equivalent remedial action may also be agreeable.

NIFRS will always complete a follow up audit.

7.5 Prohibition Notice

Where immediate action is required due to deficiencies so serious as to pose a serious risk to persons in case of fire, it may be necessary to prohibit or restrict the use of premises. An explanation of why such action is required is necessary at the time the breach is detected. This is confirmed in writing in most cases within 5 working days and in all cases within 10 working days.

Where dangerous conditions are found, NIFRS will issue a Prohibition Notice, that will prohibit or restrict the use of the premises. Failure to comply with a Prohibition Notice constitutes an offence and may result in the prosecution of the person responsible.

NIFRS will always complete a follow up audit and monitor compliance with the Prohibition Notice.

7.6 Alterations Notice

If NIFRS is of the opinion that any future change of circumstances to the premises, or to the use of the premises, could result in a significant increase in risk to people using the premises, NIFRS may serve on the appropriate person an Alterations Notice requiring the appropriate person to notify NIFRS of the proposed changes before any changes take place.

7.7 Withdrawal of a Notice

Alterations, Enforcement and Prohibition Notices may be withdrawn at any time but should be deemed to be in force until such time as they are withdrawn or cancelled.

In most cases there is a right of appeal against a Notice and, where there is a right of appeal, advice on the appeal mechanism will be set out in writing at the time of serving the Notice.

7.8 Decision Making

Decisions about enforcement action are initiated by the officers who inspect the premises in accordance with their level of authority. Consultation with more senior colleagues will occur when appropriate.

Prohibiting a premises or part of a premises, can only be authorised by Assistant Chief Fire Officer (Community Protection) or an appropriate officer authorised to act on their behalf.

Decisions to issue a simple caution or prosecute are taken by Assistant Chief Fire Officer (Community Protection) following a recommendation by the Area Commander and Area Group Commander.

7.9 Appeals

In most cases there is a right of appeal against a Notice and, where there is a right of appeal, advice on the appeal mechanism will be set out in writing.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing and issued with the appropriate documentation.

8 SIMPLE CAUTION AND PROSECUTION

Simple caution and prosecution are the two possible outcomes to bring those responsible for alleged breaches of the law to account. Where appropriate, NIFRS may use one of these measures in addition to issuing an Enforcement or Prohibition Notice.

8.1 Simple Caution

A simple caution is likely to be appropriate only where there has been a significant contravention of the law, giving rise to a potential risk of death or serious injury. There are three preconditions that must be satisfied before a simple caution is administered:

- there is sufficient evidence to provide a realistic prospect of conviction;
- the offender admits his or her guilt; and
- the offender agrees to being cautioned, having been made aware that the caution may be cited in court in the case of future offences.

The offender must be given a full explanation of the significance of the caution before being allowed to accept it, as a simple caution is an admission of guilt to a criminal offence and is recorded as such. It may be cited if the offender is found guilty of the same or a similar offence within two years of the original offence. If a simple caution were to be offered and refused by the offender, then a prosecution would be considered.

8.2 Prosecution

The decision to prosecute is a serious step. Fair and effective prosecution forms a legitimate element of NIFRS' strategy to reduce the risk of death and injury in the workplace by enforcing fire safety law. Any prosecution has serious implications for all involved; the person prosecuted, casualties, witnesses and NIFRS personnel. NIFRS will apply the guidance set out below so that it can make fair and consistent decisions about prosecutions. The decision to prosecute is taken by Assistant Chief Fire Officer (Community Protection) in conjunction with Legal Services.

Each case is unique and must be considered on its own facts, but there are general principles that apply in all cases. Officers will be fair, independent and objective when considering enforcement action. NIFRS will ensure that the correct individual and/or company is prosecuted for the correct offence/s.

NIFRS is a public authority for the purposes of the Human Rights Act 1998 and will apply the principles of the European Convention on Human Rights in accordance with the Act, as it does in all of its enforcement activity.

A prosecution may be taken following full consideration of the many factors arising from the alleged breaches of the law. These will include:

- the seriousness of the offence (the severity and scale of potential and actual risk and the seriousness of any breach of law);
- the previous history including the safety performance of the offender (the appropriate person) concerned;
- the willingness of the party to correct the situation and prevent a recurrence of the problem;
- an acceptable explanation for the occurrence (the breach in law);
- the likelihood of the accused being able to establish a satisfactory defence; and
- the probable public benefit of a successful prosecution.

All decisions to prosecute will take account of the Public Prosecution Service Code for Prosecutors. There are two tests NIFRS uses in taking the decision to prosecute.

The first test is the evidential test. NIFRS has to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the defendant on each charge. In doing so, NIFRS will consider whether the evidence can be used and is reliable. A realistic prospect of conviction is an objective test which means that a court, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

If the case does not pass the evidential test, it cannot go ahead. If the case does meet the evidential test, NIFRS will then decide whether a prosecution is in the public interest.

The second test is the public interest test. The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. NIFRS will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute will usually depend on the seriousness of the offence or the circumstances of the offender.

NIFRS will satisfy itself that the case meets both tests before proceeding with a prosecution.

The majority of prosecutions undertaken by NIFRS are issued in the Magistrates' Court. However, some statutory provisions allow NIFRS to issue proceedings in the Crown Court. Consideration will be given to issuing Crown Court proceedings where the gravity of the offence would warrant such a course of action.

9 PUBLIC REGISTER

In accordance with the Environment and Safety Information (Northern Ireland) Order 1993 NIFRS will be obliged to enter details of certain notices called 'relevant notices' onto a register to which the public have access.

The relevant notices are Enforcement Notices, Alterations Notices and Prohibition Notices and these will be available to view in the Public Register on the fireSAFE section of NIFRS' website www.nifrs.org.

10 DATA PROTECTION

NIFRS will comply with the principles of the Data Protection Act 1998 governing the use of personal data received or obtained and will respect the rights and freedoms of those individuals when processing their details. NIFRS' Data Protection Policy lays out our strategic approach to meeting the legal requirements. Details are available on request and on the NIFRS website www.nifrs.org.

11 FREEDOM OF INFORMATION

Under the Freedom of Information Act 2000, individuals are given 'a general right of access to information held by public authorities in the course of carrying out their functions subject to certain conditions and exemptions'. Under Section 19 (2) of the Act, public authorities are required to produce a publication scheme setting out details of the information routinely published or made available, how the information is made available (in hard copy and on-line), and whether it is available free of charge or on payment. Details of NIFRS' publication scheme are available on our website under Freedom of Information.

12 CIRCULATION

This Policy will be made freely available to all members of the public on request and will be made available via website www.nifrs.org.

NIFRS welcomes comments on this Policy and on how it can improve the services it provides.

Comments can be made via the same contact routes as outlined for complaints.

13 COMPLAINTS

Details on NIFRS' complaints procedure is available via the NIFRS website or on request using the contact details outlined below:

NIFRS website: www.nifrs.org

Email: enquiries@nifrs.org

Letter to: Assistant Chief Fire Officer (Community Protection)
Northern Ireland Fire & Rescue Service
1 Seymour Street
Lisburn
BT27 4SX

Telephone: 028 9266 4221

If a person is unhappy with the level of service they have received and they wish to make a complaint, this may be made through any one of the contact points described above.

In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved. NIFRS aims to resolve issues quickly and effectively and to learn from the outcomes.