

Proposals to complete the transposition of the
Framework Directive on Health and Safety of
Workers 89/391/EEC into the Regulatory Reform
(Fire Safety) Order 2005

Consultation



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Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 0300 123 1124
Fax: 0300 123 1125
Email: communities@capita.co.uk
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Summary

Scope of the consultation

Topic of this consultation:	This consultation document discusses an omission in the transposition of the Framework Directive on Health and Safety of Workers into the Regulatory Reform (Fire Safety) Order 2005 which has been detected.
Scope of this consultation:	The purpose of the consultation is to get views on the proposed regulations and to establish the likelihood of any associated costs.
Geographical scope:	This consultation applies to England only.
Impact Assessment:	Our initial assessment indicates that there are no impacts on business, the third or public sectors and therefore no formal Impact Assessment has been completed. However we will, of course, produce an Impact Assessment, if as a result of the consultation, it seems likely that these proposals will impose costs.

Basic Information

To:	Enforcers of the Regulatory Reform (Fire Safety) Order and businesses
Body/bodies responsible for the consultation:	Communities and Local Government
Duration:	7 July – 6 October
Enquiries:	Rhian Blackman Rhian.Blackman@communities.gsi.gov.uk
How to respond:	Rhian Blackman 1/A4 Ashdown House 123 Victoria Street London SW1E 6DE Rhian.Blackman@communities.gsi.gov.uk
Additional ways to become involved:	Please contact Rhian Blackman if you require the document in a different format.
After the consultation:	The Government will publish a summary of responses within three months of the closure of the consultation.
Compliance with the Code of Practice on Consultation:	The consultation complies with the Code of Practice.

Background

Getting to this stage:	This is the first stage in rectifying the omission which has been identified.
Previous engagement:	This is the first stage in the process.

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Section 1

Introduction

- 1.1 The recent reform of fire safety legislation which led to the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541; 'the FSO') simplified the obligations of both those responsible for fire safety in non-domestic premises and those responsible for enforcing fire safety legislation.
- 1.2 Since the FSO came into force, a small gap has been discovered in the implementation of the Framework Directive on Health and Safety of Workers 89/391/EEC ('the Framework Directive').
- 1.3 The consultation paper looks at the Government's preferred option on how to rectify the omission and asks for your views on the impact of the proposed new regulations.
- 1.4 Although the FSO extends to England and Wales, the proposed regulations being consulted on here apply to England only. It is our understanding that the Welsh Assembly Government is preparing to rectify the same gap in the FSO for Wales and the Scottish Government are considering a similar course of action for their legislation. The Northern Ireland Executive is in a slightly different position as they are still introducing their new fire safety legislation. They are considering the omission in the light of their recent public consultation.
- 1.5 Full details of the options follow in this consultation package, along with details of:
 - How to respond
 - Consultation criteria
 - Contacts for comments/complaints
- 1.6 Subject to the results of this consultation exercise, it is proposed that the new regulations will be laid in February 2010 and will come into effect immediately.
- 1.7 It is not necessary for these regulations to come into force on a common commencement date as we do not consider that they will have an impact on business.
- 1.8 This consultation is open for a period of 13 weeks, commencing on 7 July 2009.

Section 2

Background to the policy at issue

2.1 The FSO came into force on 1 October 2006, by virtue of the Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006 (SI 2006/484). Various pieces of fire safety related legislation adopted over a period of over thirty years were replaced by a single Regulatory Reform Order under the Regulatory Reform Act 2001.

2.2 Since the introduction of the FSO, Communities and Local Government (CLG) has been working to complete the transposition tables for the FSO. These are designed to satisfy the European Commission that EU legislation is properly transposed into Member State law. In completing the transposition tables, CLG has discovered a gap in the implementation of the Framework Directive which needs to be rectified.

2.3 Article 6(3)(b) of the Framework Directive says:

'the employer shall, taking into account the nature of the activities of the enterprise and/or establishment...where he entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety'

2.4 The Framework Directive has been transposed into UK law via the Health and Safety at Work Act 1979 (HSWA) and any regulations made under it. The obligation is replicated in regulation 13(1) of the Management of Health and Safety at Work Regulations 1999 (MHSWR). Article 47 of the FSO disapplies the MHSWR in relation to fire safety to avoid overlapping legislation between the FSO and the HSWA and its regulations. This has had the unintended effect of disapplying article 6(3)(b) of the Framework Directive as no similar article was included in the FSO.

Section 3

Proposals to deal with the omission

3.1 Two options have been considered in the preparation of this consultation paper:

Option 1 – Do nothing

3.2 This option is provided purely for completeness. It is not a practical option as the UK must implement the Framework Directive and it must provide its completed transposition tables to the European Commission without omission. Doing nothing is therefore not an option in this case.

Option 2 – make new regulations under article 24 of the FSO

3.3 Make new regulations under article 24 of the FSO to cover the omission. The working title for the resulting Statutory Instrument is 'Fire Safety (Employee Capabilities) (England) Regulations 2010. We have provided a draft at Annex A.

3.4 This option would provide a straight forward approach to rectify the omission. It would be subject to negative Parliamentary procedure and the regulations would simply repeat regulation 13 (1) of the MHSWR, as regards fire safety. This is the Government's preferred option.

3.5 Subject to negative resolution of either House of Parliament, new regulations may be made under the FSO. Article 24 of the FSO gives the Secretary of State the power to make regulations "as to the precautions which are to be taken or observed in relation to the risk to relevant persons as regards premises in relation to which the FSO applies".

Options considered but not taken further

3.6 The option to amend the FSO itself was considered but not taken further. Article 24 of the FSO gives the Secretary of State powers to make regulations without amending the overarching legislation.

Question 1: Do you agree that option 2 is the best course of action to rectify the omission?

Question 2: Do you wish to offer any comments on the drafting of the regulations?

Section 4

Assessment of impact of regulations

- 4.1 We do not propose publishing an Impact Assessment. Our initial assessment indicates that there are no impacts on business, the third, or public sectors and therefore no formal Impact Assessment has been completed. If you do not believe that this is the case, we would be grateful for your views as to where the impacts lie. Our initial assessment indicates that any resulting regulations would have a minimal impact on businesses or enforcers of the legislation as it was never intended that the FSO should remove any requirements from the Framework Directive, HSWA, or MHSWR. Businesses must already comply with the MHSWR, the proposed regulation here simply rectifies the anomaly brought about by the FSO's disapplication of MHSWR as regards fire safety.
- 4.2 If however, as a result of this consultation, it appears that there may be costs to either businesses or enforcers, a full Impact Assessment will be published alongside any new regulations.

Question 3: Whilst we do not believe any costs will fall from these regulations, it would be helpful if those responsible for complying with the regulations and those responsible for enforcing them could indicate if they think there are costs associated with the new regulations and why.

Section 5

Other issues

5.1 We believe we have covered the main issues relating to the proposals. However, if there are any points you would like to raise that are not covered, please do so.

Question 4: Do you wish to make any other comments about this consultation?

Section 6

The consultation criteria

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

- Formal consultation should take place at a stage when there is scope to influence the policy outcome
- Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant, who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

CLG will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and to respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Co-ordinator
Zone 6/H10
Eland House
London SW1E 5DU

or by e-mail: consultationcoordinator@communities.gsi.gov.uk

Section 7

How to respond

Responses to this consultation must be received by 6 October 2009. We are not providing a form for consultation responses on this occasion.

Please submit your response, **preferably by email**, but also by post or fax to:

Rhian Blackman
Fire and Resilience Directorate
Communities and Local Government
Floor 1, Zone A4
Ashdown House
Victoria Street
London
SW1E 6DE

Email: rhian.blackman@communities.gsi.gov.uk

Fax: 0207 944 8319

Additional copies

You may make copies of this document without seeking permission.

An electronic version can be found at the Consultation Section of the Department's website: www.communities.gov.uk/fire/firesafety

After the consultation period

Within three months after the close of the consultation period, we will analyse the responses to the consultation and produce a feedback document which summarises the received responses and comments and the impact on the proposals as a result of the consultation.

Annex 1

Consultation questions

Question 1: Do you agree that option 2 is the best course of action to rectify the omission?

Question 2: Do you wish to offer any comments on the drafting of the regulations?

Question 3: Whilst we do not believe any costs will fall from these regulations, it would be helpful if those responsible for complying with the regulations and those responsible for enforcing them could indicate if they think there are costs associated with the new regulations and why.

Question 4: Do you wish to make any other comments about this consultation?

Annex 2

List of consultees

All Fire and Rescue Authorities
Business and Community Safety Forum
Chief Fire Officers Association
Confederation of British Industry
Crown Premises Inspection Group
Department of Work and Pensions
Federation of Small Businesses
Health and Safety Executive
Local Authorities
Local Authority Co-ordinators of Regulatory Services
Local Government Association
Ministry of Defence
Northern Ireland Executive
Practitioner's Forum
Scottish Government
Welsh Assembly Government

Annex 3

Option 2 – proposed draft Regulations under Article 24 of the Order

STATUTORY INSTRUMENTS

2009 No. 000

FIRE PRECAUTIONS, ENGLAND

The Fire Safety (Employees’ Capabilities) (England) Regulations 2010

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

These Regulations are made in exercise of the powers conferred by article 24 of the Regulatory Reform (Fire Safety) Order 2005(1).

In accordance with article 24(4) of that Order the Secretary of State has consulted such persons or bodies of persons as appeared to the Secretary of State to be appropriate.

The Secretary of State makes the following Regulations:

Citation, commencement and application

1.—a) These Regulations may be cited as the Fire Safety (Employees’ Capabilities) (England) Regulations 2009 and shall come into force on [] 2009.

(1) These Regulations apply to England only.

Employer to take employees’ capabilities into consideration

2. Every employer must, in entrusting tasks to employees, take into account their capabilities as regards health and safety, so far as they relate to fire.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

(1) S.I. 2005/1541; amended by S.I. 2006/484.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to England only, provide that employers must take into account employees' capabilities as regards fire safety in entrusting tasks to them. They implement article 6(3)(b) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, and mirror regulation 13(1) of the Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242).

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