



Initial Evaluation of the Effectiveness of
The Regulatory Reform (Fire Safety) Order 2005
Fire Research 3/2009



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Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
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Contents

Executive summary of research findings	3
Chapter 1 Introduction	8
1.1 Structure of the report	9
1.2 Acknowledgements	9
Chapter 2 Overview of the legislation	10
2.1 1971 – 2006	10
2.2 2006 onwards: Duties under the FSO	11
Chapter 3 Enforcers' experience and perceptions	13
3.1 Overview	13
3.2 About the respondents	14
3.3 Organisational effects	14
3.3.1 Staffing levels and financial resources	14
3.3.2 Training	16
3.3.3 Legal resources and legal actions	17
3.4 Integrated risk management planning and data management	17
3.5 Cooperative arrangements between enforcers	21
3.6 Views on fire risk assessment guidance from HM Government	24
3.7 Perceived extent of awareness of the FSO	26
3.7.1 Raising awareness of the FSO	29
3.8 Relationships with 'responsible persons'	31
3.8.1 Advice versus enforcement	31
3.8.2 Prosecutions	35
3.8.3 Definition of 'responsible persons'	37
3.9 FRAs' views of third party fire safety specialists	38
3.10 Areas for further support or improvement	41

Chapter 4	'Responsible persons' experience and perceptions	42
4.1	Overview	42
4.2	About the respondents	42
4.3	Awareness and understanding of the FSO	43
4.3.1	Awareness and its sources	44
4.3.2	Understanding of the FSO	46
4.4	The principle of risk assessment	47
4.5	Fire risk assessment in practice	53
4.5.1	Previous experience of risk assessment	53
4.5.2	Risk assessment under the FSO	54
4.5.3	Confidence in carrying out one's own risk assessment	56
4.5.4	Perceived levels of risk in own premises	58
4.6	Costs and management consequences	58
4.7	Sources of advice and guidance	62
4.8	Views on fire risk assessment guidance from HM Government	64
4.9	Use of third party consultants	67
4.10	Relationships with enforcers	72
4.10.1	Consistency of approach between enforcers	74
4.11	Defining the 'responsible person'	75
4.12	Areas for further support or improvement	76
Chapter 5	Conclusion	77
Appendix A:	Glossary of terms	79
Appendix B:	Research objectives	81
Appendix C:	Research method	83
Appendix D:	Research sample	84
Appendix E:	Topic guides	87

Executive summary of research findings

The Regulatory Reform (Fire Safety) Order 2005, introduced in October 2006, simplified the law on fire safety by replacing over 70 separate pieces of fire safety legislation. Early in 2008 Communities and Local Government (CLG) commissioned qualitative research into how the Order was bedding in in England among enforcers of the Fire Safety Order (FSO), those responsible for fire safety in businesses ('responsible persons'), and the fire safety industry.

Following a series of scoping interviews with sector stakeholders; face to face and telephone depth interviews were conducted with:

- 20 enforcers, primarily Fire and Rescue Authorities (FRAs) but also the other enforcers listed under article 25 of the FSO
- 15 representatives from the fire safety industry, including some third party fire safety consultants; and
- 45 businesses split across a variety of sectors and company sizes.

This report represents a collection of views, opinions and experiences of those who were interviewed.

The early indications about the how the FSO is bedding in are positive. The research indicates that the enforcing authorities welcome the legislation, while those from businesses (when aware of the compliance requirements of the FSO) tend to understand and support the principle of a risk assessment based approach to fire protection. Most of the respondents able to give an opinion felt that the FSO was an improvement on previous legislation. The research also shows that there are areas which enforcers and businesses have concerns about.

Enforcers: key findings

Overall, enforcers welcomed the introduction of the FSO. This section of the report necessarily focuses on the views of Fire and Rescue Authorities (FRAs) as they are the primary enforcers. The views of other enforcing bodies are included where appropriate. Broadly, their comments centred around the following themes:

Local determination based on risk

Enforcing authorities reported a good understanding of risk and confirmed the development and implementation of audit strategies and programmes designed to focus resources on the highest risk premises. FRAs confirmed that there was a clear link between their locally determined Integrated Risk Management Plan (IRMP) and their audit programme and enforcement activity under the FSO. Data management tools to assess and target risk are becoming better understood and more effectively used.

FRAs reported that their perception of high risk premises was heavily influenced by the extent to which they were used to provide sleeping accommodation. The highest risk premises were generally seen as Houses in Multiple Occupation (HMOs), hotels and guest houses and take-away food establishments, specifically with accommodation provided (or available) above or below these outlets. Hospitals and significant industrial plants were also mentioned as particularly high risk.

Relationships with other enforcers

Responsibilities for fire safety enforcement are set out in the FSO. This is generally an understood and welcome part of the legislation. There was consensus among the various enforcing authorities that effective enforcement relied on good levels of co-operation particularly between local authorities and FRAs. Enforcing respondents reported that arrangements for such co-operation were working well.

The evaluation found no evidence to suggest FRAs and other enforcing authorities were unwilling or unable to work closely with each other either formally or informally. Those local authorities interviewed noted that the FRAs they worked with had been helpful and cooperative in making their fire safety expertise available through the development of shared or delegated working arrangements.

Some FRAs and local authorities would welcome more guidance on the enforcement responsibilities of FRAs under the FSO, and local environmental health officers, under the Housing Act 2004. It should be noted that this evaluation was carried out too soon to gauge how the recently published Local Authority Coordinators of Regulatory Services (LACORS), Chief Fire Officers Association (CFOA) and Chartered Institute of Environmental Health (CIEH) guidance *Housing – Fire Safety* for certain types of existing housing had addressed this concern.

Impact on internal management arrangements

The FRAs interviewed reported that to date, the implementation of the FSO had not led to major organisational changes within their fire safety departments and there had not been any substantial changes to the number of technical fire safety staff employed. The resources available to fund audit and enforcement of the FSO were consistent with the position under the previous regime, but the FSO had allowed a more effective targeting of these on the narrower, risk based, range of premises.

All FRAs interviewed reported that they had provided specific training for their fire safety staff to prepare them for the new audit duty under the FSO. Most were confident that this initial investment and their ongoing training activities were sufficient to enable them to deliver their responsibilities under the FSO effectively.

FRAs recognised that the FSO required a different way of working and that this was likely to require increased resource provision in some areas. The most frequently mentioned areas where greater investment may be required in the future were: training for fire safety officers; increased support from FRA legal teams; and greater investment in IT systems to support local understanding of effective implementation.

Guidance

FRAs involved in this evaluation reported that the suite of technical fire safety risk assessment guidance documents produced by HM Government were comprehensive and useful. All made use of or referred to this material when handling enquiries from 'responsible persons' looking for advice on fire safety risk assessments.

Some of the FRAs interviewed indicated that they had adopted a cautious approach to the provision of advice and support to 'responsible persons'. Their concern was that providing detailed or directional advice could compromise their enforcement responsibilities and potentially lead to liability issues arising later and in the event of a subsequent fire.

Concerns from enforcers

There are concerns among some FRAs and some in the fire safety industry, about the extent to which those responsible for premises covered by the FSO are aware of their fire safety responsibilities. Those FRAs interviewed for this evaluation agreed that, in their experience, 60 per cent of businesses were aware of the order. This, however, leaves a large proportion of businesses that claim either not to know about their duties under the FSO, or have not implemented its provisions. FRAs believe it is among smaller businesses (those with fewer than 50 employees) that awareness and compliance are lowest.

Some FRAs felt that more legal support will be required to handle an increased number of prosecutions over time. To date, it was suggested that a generally supportive and educative approach had been taken to the provision of fire safety advice to deliver compliance.

Some FRAs felt that as time passes and the requirements of the FSO are no longer new, businesses should be offered less discretion and that they were therefore likely to shift to a more enforcement based approach, with greater pursuit of prosecutions.

A further concern mentioned by FRAs, in the context of the legal implications of the FSO, was the potential for disagreement over who is the 'responsible person' in some premises – specifically in large multi-site businesses.

Concerns were expressed in relation to those considered fire safety specialists under the FSO, where the legal definition (of anyone with sufficient training and experience or knowledge and other qualities to enable them to properly assist in the undertaking of preventative and protective measures) was thought to lack clarity. Several FRA respondents questioned the extent to which action could or would be taken against a fire safety specialist in cases where inadequate or poor advice was considered a contributory factor in any failure to comply with the FSO's provisions.

'Responsible persons': key findings

There was a broad range of findings from the research with responsible persons. This was to be expected as the FSO covers such a wide range of organisations. Broadly speaking, the 'responsible persons' interviewed, had had a positive experience of the FSO, but for some there was still some uncertainty about their responsibilities and where to get further advice.

The risk assessment process

Some businesses felt that the introduction of the FSO had made little difference to their management of the risks associated with fire. The FSO represented a continuation of their duties under the 1997 Fire Precautions (Workplace) Regulations (as amended) and compliance was seen as a normal business responsibility.

Guidance

Some businesses – particularly the smallest – said they would prefer the certainty of having very prescriptive guidance telling them exactly what was required to deliver compliance, rather than them having to carry out a risk assessment and the associated responsibilities.

The research indicated that 'responsible persons' often regarded their local FRAs as the first port of call for, and preferred source of, specific fire safety advice and support. Businesses generally reported receiving high levels of help and advice when they asked for or needed it.

Throughout the interviews favourable feedback was received from those businesses that had been audited by an FRA – most of which were either providers of sleeping accommodation or retail premises. They considered the FRA to be friendly and helpful, and all reported receiving a reasonable or good level of support and advice.

Concerns amongst responsible persons

Respondents from businesses covered by the FSO generally recognised risk assessment as a good way to assess their property and had put in place procedures and practices to minimise the risk and impact of fire.

The variable quality of the risk assessments that would be carried out by non-specialists under the FSO was raised as a concern among some respondents particularly about the level of detail that had been considered when undertaking the risk assessments. It was

suggested that, in some cases, those responsible for carrying out and implementing the outcome of a fire safety risk assessment might lack the necessary expertise or experience to ensure compliance.

Few of the businesses interviewed for this evaluation were aware of the availability of the HM Government's guidance, or of other sources of fire safety guidance. All, however, felt it important that guidance on implementing their responsibilities should be available – and expected their FRA or local authority to be a primary source.

Among those 'responsible persons' who had used the HM Government guidance, the feedback was positive. Some, along with those representing the fire safety industry, expressed concern at how the guidance documents may be being used by FRAs and sought greater clarity over the extent to which the guidance was simply that, or whether it was being used by some FRAs to set minimum standards.

Some in the fire safety industry reported reservations about the level of expertise and experience of some fire safety officers, and their variability between different FRAs, and expressed concern that this may compromise the outcome of an audit.

There was a concern expressed by some of those interviewed from each of the interested parties (whether enforcers, businesses or the fire safety industry) over the variability in the level of competence evident in the work of independent fire risk assessors or fire safety consultants. This led to some demands for a system of accreditation to be put in place, to quality-assure the work of such organisations or individuals. Few of the 'responsible persons' interviewed were aware of any independently operated accreditation schemes for fire risk assessors.

Conclusions

The general picture from this early snapshot from both enforcers and responsible persons is that the FSO is bedding in well and there are many positives to take from this. All parties tend to think that the risk assessment approach is the correct one and are embracing it to a greater or lesser degree.

However, there are some areas which could benefit from further action. These include: raising awareness of the requirements of the FSO; consideration of more tailored advice to 'responsible persons'; clarification of who a 'responsible person' is; clarification of who may have an appropriate level of fire safety expertise to assist with delivering compliance with the FSO; and, ensuring FRAs continue to take a supportive and educational approach to compliance.

These are issues which can be considered further in the longer term evaluation to establish the impact and effectiveness of the FSO.

Chapter 1

Introduction

The Regulatory Reform (Fire Safety) Order 2005 ('the FSO') was introduced in October 2006. It represented the biggest reform of fire safety legislation for more than 30 years and aimed to simplify the law and reduce the administrative burden for many thousands of businesses. For the first time, it brought all non-domestic premises within the scope of fire safety law.

The specific objectives of the FSO were to:

- streamline and clarify the legislative requirements in relation to fire safety on businesses
- create a regime based on risk assessment, fire prevention and mitigation
- increase compliance
- focus the resources of Fire and Rescue Authorities (FRAs) on premises representing the highest risks; and
- ensure fire safety facilities and equipment is well maintained.

In order to understand the early impact of its policy, Communities and Local Government (CLG) commissioned this initial evaluation of the effect and impact of the FSO in England during the first 18 months – 2 years of its being in force.

The evaluation aimed to capture a snapshot of the impact of the FSO and its implementation to date among the following key groups: the enforcers – primarily the FRAs; those with responsibility for fire safety in commercial or public premises; and, the fire safety industry.

CLG's objectives were, from a qualitative perspective, to:

- establish whether the original aims and objectives of the FSO are being met
- offer a view, based on the evidence collected, on how implementation of the FSO has affected fire safety (ie whether the FSO is helping to reduce avoidable fires and consequently death, injury and loss of property); and
- provide a basis for a future, longer-term evaluation of the FSO (planned to start within the next three-five years).

1.1 Structure of the report

Section 2 offers a brief summary of the legislative position prior to the introduction of the FSO and sets out the main requirements that were placed on enforcing authorities and all those responsible for premises to which the public have access.

Section 3 sets out the views of a purposive sample of FRAs, and other enforcing authorities, on how the FSO is bedding in in a number of areas. These include the impact the FSO has had to date on their organisational structure, workload and working arrangements; and on their relationships with 'responsible persons' and the development of an effective audit and enforcement role.

Section 4 looks primarily at the experience and awareness of those with the responsibility for ensuring compliance with the FSO in a range of non-domestic premises. It includes their views on the principles of the new fire safety regime, the sources and quality of information they used that were designed to support compliance, the FSO's perceived effects on fire safety and their relationships with the enforcing bodies.

The views of members of the fire safety industry have been included in each of these sections as appropriate.

Details of the research objectives, method and sample are set out in Appendices B, C and D, along with the key areas of interest for CLG as set out in topic guides for the relevant groups in Appendix E. Details of FRAs' audit and enforcement activity under the FSO in 2007-08 (the first full year of its being in force) were published in the CLG Operational Statistics Bulletin dated 4 December¹.

1.2 Acknowledgements

FDS International and CLG acknowledge the kind cooperation and help given by a wide range of individuals and corporate bodies that contributed to this research study by granting time to be interviewed.

¹ www.communities.gov.uk/publications/fire/frsoperationalstats2007-08

Chapter 2

Overview of the legislation

2.1 1971–2006

A key aim of the FSO was to simplify the legislative environment in which businesses and FRAs operate by consolidating all the legislation on fire safety together in a single instrument. Prior to its introduction, there were over 70 separate pieces of legislation relating to fire safety in the work place, the most significant being the Fire Precautions (Workplace) Regulations 1997, as amended ('the Workplace Regulations') and the Fire Precautions Act 1971 ('the 1971 Act').

The Workplace Regulations were introduced in 1997 to implement two European Directives on health and safety at work. They applied to virtually all workplaces and were designed to ensure all employers reduced the risk of fire in their premises through an active risk-assessment based approach to fire safety management. Under the Workplace Regulations, all employers were required to:

- carry out and identify the significant findings from a fire risk assessment
- provide and maintain such fire precautions as are required to safeguard those who use the workplace; and
- provide information, instruction and training to employees about the fire precautions.

The 1971 Act required certain designated premises to apply for and hold a fire certificate, issued by the local Fire and Rescue Service. The focus of the 1971 Act was to ensure the safe evacuation of premises in the event of a fire and those designated premises to which it applied were required to put in place reasonable arrangements to ensure a means:

- of escape in case of fire, capable of being used safely at all times
- for fighting fire; and
- of giving warning of in case of fire.

Premises designated under the 1971 Act were hotels and boarding houses providing sleeping accommodation for more than six people (whether employees or guests), or providing sleeping accommodation other than on the ground or first floor of the premises; factories; offices and shops (where more than 20 people were working at any one time

or more than 10 worked other than on the ground floor); and railway premises. These designated premises were also likely to be subject to the provisions of the Workplace Regulations.

FRAs were the primary enforcing authorities under both the Workplace Regulations and the 1971 Act. Whilst there was widespread familiarity with the certification regime under the 1971 Act, there was some suggestion that the more dynamic approach to managing fire safety established by the Workplace Regulations was less well embedded among both the business community and the enforcing authorities.

2.2 2006 onwards: Duties under the FSO

The FSO sought to emphasise the importance of taking a proactive approach to fire prevention and protection. It replicated and extended the requirements of the Workplace Regulations in relation to employers to all those with responsibility or some degree of control over any non-domestic premises to which the public have access.

Under the FSO, a 'responsible person' has a statutory duty to carry out a fire safety risk assessment and to identify, implement and maintain appropriate measures to ensure the safety of the occupants and anyone else likely to be affected by a fire on premises. A 'responsible person' is a person who is usually an employer, owner or occupier, or someone who controls in some other way, business or other non-domestic premises. These include premises occupied by a charity or voluntary organisation. A contractor or other person who has some control of premises short of total control, has similar duties depending on the extent of that control.

For employers, the introduction of the FSO was considered to represent a continuation of their current statutory duties under the Workplace Regulations. However, for some self-employed people and elements of the voluntary sector, the introduction of the FSO brought them within the scope of fire safety legislation for the first time. For the majority, the FSO was felt to build on the existing duty under the Health and Safety at Work Act 1974 (or other legislation, such as the Licensing Act) for someone to take responsibility for the safety of people on their premises.

Under the FSO, the primary responsibility for enforcing compliance with its provisions lies with local FRAs. However, other bodies also have a statutory duty to enforce the FSO's provisions in certain premises. These are:

- local authorities – in respect of certain sports grounds²
- the Health and Safety Executive (HSE) – for construction, shipbuilding sites and nuclear sites

² This refers to premises which consist of (i) a sports ground designated as requiring a safety certificate under section 1 of the Safety of Sports Grounds Act 1975 and (ii) regulated stands within the meaning of section 26(5) of the Fire Safety And Safety of Places of Sport Act 1987.

- the fire service maintained by the Secretary of State for Defence; and
- the Crown Premises Inspection Group (CPIG) for Crown-owned or Crown-occupied premises generally.

In addition, local housing authorities have responsibility under the Housing Act 2004 for fire safety in certain types of housing. In practice, this leads to a shared enforcement responsibility with the FRA, primarily in flats and Houses in Multiple Occupation (HMOs) where the FSO applies to the common or shared parts.

Enforcing authorities are required to audit the extent to which 'responsible persons' are delivering a satisfactory level of compliance with the risk assessment and general fire precaution provisions of the FSO.

Under the 1971 Act, FRAs had a statutory responsibility to inspect designated premises and to issue fire certificates if certain prescribed standards of fire safety were in place. The FSO, however, is based on the principle that those responsible for activities giving rise to risk have the responsibility for the fire safety of their premises and the people who use them. The requirement for enforcing authorities to enforce the FSO in a way that reflects that principle represents a shift in approach for FRAs. Those responsible for commercial premises and other buildings open to the public now have a duty to manage and mitigate those risks to ensure compliance.

Where enforcers consider that the fire risk assessment and fire safety precautions in place in a particular premises are inadequate, they are expected to advise on where the provisions of the FSO have not been complied with; explain why they take that view; and, where necessary, require the responsible person to take action. In delivering a level of compliance that reasonably protects those in non-domestic premises, the enforcing authorities have a range of measures available, ranging through the provision of advice and information, informal and formal enforcement action, to prosecution.

Chapter 3

Enforcers' experience and perceptions

3.1 Overview

Enforcers welcomed the FSO for two main reasons. First, they saw it as an important step in securing greater protection against fire risks. By placing responsibility firmly on the 'responsible persons' in charge of premises, the FSO was felt to have created a more proactive and aware approach among businesses. On the other hand, that positive effect was only apparent in businesses that had become aware of their new responsibilities under the FSO and FRAs judged that awareness was not yet widespread enough.

Second, the FRAs in particular regarded the FSO as the catalyst for greater professionalism in their work, because it meant that a more rigorous risk-based and data-based approach to fire prevention now permeated their work

The enforcers interviewed – particularly FRAs – recognised that the FSO had brought about a major culture change in the way fire safety is approached. That change has presented them with a number of challenges, some of which they have worked through and addressed, while others still require further effort to overcome.

For example, FRAs now felt better equipped to target their preventative efforts and resources on where they are likely to have greater effects. The data management tools to assess and target risk are becoming better understood and more effectively used. The training of Fire Safety Officers has been effective in reorienting them to their new roles. FRAs and local authorities have generally arrived at effective ways of cooperating to make the best use of their respective expertise in discharging their responsibilities.

However, there remain challenges (and calls for further support) in several areas:

- increasing awareness among businesses that have not yet realised their duties under the FSO
- ensuring appropriate levels of competence and performance among third party consultants who undertake fire risk work for businesses; and
- an agreed and unambiguous definition of who is the 'responsible person' within a business – particularly in large businesses that operate from many sites.

The FSO has been in force since October 2006. The enforcers felt that, whatever its influence on the safety culture among businesses, and on the effectiveness of their own work, it was too early, in 2008, to discern reliably the success of the FSO in reducing deaths and losses from fire. Recognising that fires in commercial and industrial premises are rare compared with residential premises, they felt that the statistics to prove the effectiveness of the FSO would require up to a decade to accumulate.

3.2 About the respondents

The sample of enforcing authorities included in this study was purposive rather than representative. Organisations were invited to take part with the aim of securing input from as broad a variety as possible. Across the initial ('scoping') and main stages of interviewing, each category of enforcing authority set out in the FSO was included. The study aimed to include interviews with FRAs to give a regional spread. In all 20 enforcement-related organisations were interviewed for this study, including 13 FRAs. Details of the sample are given in Appendix D.

Within the FRAs, the interviews were with the head of the fire safety division. These were all experienced fire safety specialists, typically with some experience as operational fire officers too. Each was responsible for a team of fire safety officers and others.

The analysis explored whether differences emerged between FRAs that depended on such features as their size or their geographic coverage. Within the confidence that can be attached to findings from this relatively small sample, no such differences were observed consistently based on those characteristics. But a later larger-scale quantitative evaluation might yet throw light on such differences.

3.3 Organisational effects

Within the constraints of fixed budgets, enforcers have generally been able to accommodate the extra and different requirements that the FSO demands of them. Some are concerned that unanticipated training needs – in legal procedures especially – may prove onerous in the future.

The risk-management approach within the FSO harmonises well with the advent of risk-based data methods that the FRAs are becoming adept with. There is some doubt over whether the true effectiveness of FSO is measurable yet – or for several years to come.

3.3.1 Staffing levels and financial resources

Despite a significant increase in enforcement responsibilities among FRAs, those interviewed reported that, as staffing levels are constrained by budgetary considerations, the complement of dedicated technical fire safety staff had remained largely unchanged since the introduction of the FSO.

'Because we've gone from a fairly narrow focus in terms of certification to a much broader base of inspection regimes, everything's in the pot, and practically nothing's out. It's increased the amount of work that our Fire Safety Department has to cope with, it's widened their remit, but we haven't necessarily kept pace with that in terms of resourcing in fire safety. It's been a struggle.'

FRA

Without access to additional resources, and with the greater emphasis on risk, the general organisational response among those enforcers interviewed has been to target their limited resources more effectively, although the implications and implementation of this, for some, was still evolving.

'What we've had to do is to cut our cloth accordingly, and target risk more carefully than we probably had to in the past. ... we're learning to target that work more carefully. So we haven't actually increased our establishment. ... We're still struggling with that. We've still got more work than we can possibly do with the number of people we've got. So it's a process that we're going through at the moment.'

FRA

Notwithstanding any difficulties caused by the continued limited staffing resources, the move away from certification and the new emphasis on targeted risk has brought noticeable benefits to some enforcers. One enforcer reported that there had been a noticeable reduction in the administrative burden on its inspecting officers because of the FSO, and that it had been able to focus its resources on auditing compliance in a narrower – more risky – range of premises.

'Issuing certificates used to be a really hefty job – marking off every last bit of the building, with every last detail covered such as smoke alarms, fire alarms etc. – it all had to be put into a pack and then signed off. And then every time a business wanted to alter something on their premises, you used to come back and review the pack. But now it's different – we are more selective in the premises we visit.'

Enforcement authority

Among the Local Authorities interviewed, none reported that the FSO had led to either an increased workload or to an increased pressure on existing resources.

For the FRAs, whilst the level of staffing was more or less static, increased resources had been required to cover the needs for training, legal representation and improved IT systems to support effective implementation.

3.3.2 Training

All FRAs interviewed had found it effective to invest some resources in specific training for their fire safety staff to prepare them for the new audit duty under the FSO. In general, they were confident that their initial investment and their ongoing training activities were sufficient to enable them to deliver the culture change brought about by new requirements on them under the FSO. However, there was some concern around the legal work that might be incurred (which is described in section 3.3.3).

Training tended to focus on helping fire safety officers make the adjustment from a prescriptive approach to a more flexible risk-based audit approach, and on ensuring consistency of approach among the fire safety team.

‘We also did some personal development training for the staff, with an occupational psychologist – to try and get the message across, and get a consistent approach to what we’re doing. We didn’t want one member of staff at one end of the scale going up banging on tables with a big stick to everyone he met; and somebody at the other end of the scale being so laid back that pretty much anything was acceptable.’

FRA

Some of those interviewed reported that guidance issued by the Chief Fire Officers’ Association (CFOA) on enforcement and technical standards had helped with transition to and training in the new role, as had the fire safety risk assessment guidance from HM Government³.

‘We use a lot of the guidance, the key elements from both the CLG and CFOA, as a basis for some of our procedures and some of our practice documents.’

FRA

The resource implications of the training needs were seen as significant. Some FRAs had pooled resources with others to purchase shared training packages in a range of areas. This was seen to minimise FRA costs and enhance the consistency of audit and enforcement approaches.

Although other enforcers had, in some instances, perceived a need to undertake specific training (such as foundation level fire safety courses at the Fire Service College) to support the effective delivery of their duties under the FSO, concerns were raised that their fire safety enforcement responsibility may make them vulnerable to legal challenge.

‘One of my concerns is if we needed to take any legal action against anybody, then their lawyers would immediately pick up on the fact that we’re not a fire service; we don’t deal with this day in day out and therefore our competency level might be something that they could pick up on as part of the legal process.’

Local authority

³ HM Government fire safety risk assessment guides, designed to help responsible persons comply with the FSO can be found at www.communities.gov.uk/firesafety

In practice, however, local authority enforcing officers seemed to work closely with technical fire safety officers in the local FRA. FRA expertise was relied on to help with risk assessment audits and (in some cases) out-of-hours support and this close working relationship was seen by some as a preferable and pragmatic response. It was certainly seen as more cost effective than developing a comparable level of in-house fire safety expertise.

'In the past [the responsibility] would have been the fire authority's, and we are working closely with them and they will advise us and if you like we will re-badge their letters [to the sports grounds].'

Local authority

3.3.3 Legal resources and legal actions

The legal implications of the FSO were seen by FRAs as costly in terms of the resource provision to ensure effective outcomes. FRAs were concerned to ensure that their technical fire safety staff properly understood their legal responsibilities and enforcement processes. As noted in section 3.3.2, some felt this placed new stresses on training budgets.

Some FRAs interviewed had outsourced legal expertise in relation to enforcement and prosecution under the FSO. Others had entered into partnership arrangements with other FRAs, to draw upon an established 'centre of excellence' rather than trying to create their own.

'We've entered into partnership with [AN Other] Fire & Rescue to use their ... dedicated legal team, so ... that we have specialist legal guidance on tap, and we have access to a legal barrister through that partnership as well.'

FRA

Looking ahead, there was a perception among enforcers that the FSO may give rise to a need to invest in enhanced capacity if the current level of audit and enforcement activity was to be maintained.

3.4 Integrated risk management planning and data management

A proactive risk management-based approach to fire safety represented for FRAs a shift in both culture and behaviour. Those changes were clearly bedding down among the FRAs interviewed, and were acknowledged to be producing a more productive focus in their fire safety work. These FRAs confirmed that there was a clear linkage between their locally determined Integrated Risk Management Plan (IRMP) and their audit programme and enforcement activity under the FSO. Data management tools to assess and target risk are becoming better understood and more effectively used.

The Government sets out its priorities and objectives for FRAs in the *Fire and Rescue Service National Framework*⁴ document, which is approved and given statutory effect by Parliament. The National Framework specifies the requirement for FRAs to develop an IRMP setting out how each FRA will deliver its core business of prevention, protection and response in the light of a locally determined risk analysis.

The IRMP in particular can be used to set priorities for, and determine the nature of, an FRA's programme of site visits and inspections. By stratifying risk levels down to individual premises, the IRMP gives the opportunity to structure and target such visits against known risk parameters.

All the FRAs interviewed for this study confirmed that the linkage between their IRMPs and inspection strategies were working well, and that to a degree each informed the other. Although software systems such as (FSEC and CFRMIS⁵) were trusted and appreciated for their contribution to analysing and identifying risk, their usefulness was enhanced by a variety of local 'overlays'.

'We use the business intelligence as far as we possibly can. The risk profile would contain a history of any incidents at the site, the history of how the premises have been managed over a number of years, and any enforcement history, (have we ever had to deal with these people and issue any sorts of enforcement?) and build up a picture using that kind of methodology.'

FRA

'The evidence that we use is national data; our own incident data where we're having fires within the county; and some will be coming from inspections that we carry out. So where we continually get problems and difficulties, we make those [premises types] higher risk.'

FRA

'We realised we wouldn't get round all those [apparently low risk] premises. So having allocated this risk rating to all premises, we then (as part of the audit programme each month) randomly select from those [apparently low risk] bands. And so, some premises that may never have got an inspection under previous regimes do get inspected. And if that threw up some alarming information for us, say in corner shops or whatever, then we would undertake a targeted inspection programme on that type of premises.'

FRA

⁴ www.communities.gov.uk/publications/fire/nationalframework200811

⁵ www.communities.gov.uk/publications/fire/fireserviceemergency

However, some FRAs were concerned that they might be underestimating the number of premises in their areas to which the FSO applied and that this may impact adversely on the robustness of their local risk-based programme.

'We know we've got a gap, we know there are probably about 20,000 premises that we need to get into at some time, chances are they are going to be in the lower risk end, but there may be some higher risk stuff out there that we haven't been able to identify yet.'

FRA

Some FRAs reported that their closer local or regional partnerships with Local Authorities were also now supplementing their IRMP, by bringing in additional high quality local data, sourced within the local authority.

No FRA felt that the risk based approach to audit and enforcement was fundamentally misplaced. Indeed, they felt it offered real benefits, in terms of greater efficiency. Within overall priorities that were determined by risk, FRAs were allowed a degree of flexibility to suit local or occasional imperatives.

'The Fire Safety Order is designed to be flexible. We move away from the inspection regime, so that we have got the flexibility of approach to deal with any issue that may emerge. It may be, for argument's sake, that a campaign around a certain type of premises may be needed; and therefore significant amount of resources would have to go into that campaign to meet the demands of the risk that's identified.'

FRA

Having said that, several FRAs indicated that the reduced attention paid to premises assessed as low-risk gave rise to a degree of disquiet over what risks may exist in those premises where it was unlikely that the FRA would seldom, if ever, visit for audit purposes. The general view was that this was an inevitable consequence of the risk-based approach, and of the prioritisation discipline it imposed.

'I think the important thing is not to beat ourselves up over it, in the sense that all the good guys that kept up good conditions under the old system are still keeping up the new standards.'

FRA

All the FRAs interviewed used FSEC and CFRMIS systems to generate an inspection programme. But among them, varying levels of sophistication were apparent in the use of the data. Some FRAs used more than one of these tools in parallel and with some level of communication or interchange between them, while others did not. The extent to which FRAs felt themselves to be making best use of the software tools available to them appeared to be led primarily by resource constraints. The example was given that in some

cases the resources available to carry out post-incident inspections may be insufficient to allow this data to inform their local risk analysis and inspection process.

‘One area we would like to get more involved with would be post fire inspections, but realistically we just haven’t got the people.’

FRA

At the time of the interview, not every FRA interviewed was using local data extensively to modify their local risk levels. But all envisaged that ability to customise for local variations as part of the functionality they expected from their data systems.

‘Our local indicators [are] the number of fires we have, the number of injuries. We have always done that, and you can relate the data – we have what they call Hotspot Mapping, so you can look at the screen on the computer, pull up an area and it will tell you where the fires are and where the incidents have been.’

FRA

‘What we gather into CFRMIS is the information that we use; it’s the local information that tells us where we need to go. It tells us where we need to target. That keeps us on track if you like.’

FRA

One FRA, for example, noted that false signals from automated fire alarm systems could be an indicator of risk (although most FRAs regarded those as not posing a substantial problem in their area).

‘We’ve got our own policies about how we deal with volumes of unwanted fire signals. We carry out audits now for premises that have three in a month. So we actively go out to try and drive their management of their existing systems. It’s a question more about ‘Are we dealing with more, because there are more alarm systems out there?’ Probably we are dealing with fewer [false calls per system], because there’s more people with fire alarms in their premises now.’

FRA

All FRAs are required to make an annual return to CLG of the measured outputs from their activities under the FSO. Returns for the first full year of the FSO’s operation (2007-08) were published in December 2008⁶. Whilst FRAs indicated that completing these returns did not represent an onerous task, they were generally unsure about the use to which the aggregated data was put.

There was however a consensus that the data currently collected by CLG could not by itself satisfactorily demonstrate the extent to which the FSO was delivering its objective of improved fire safety in non-domestic premises.

⁶ www.communities.gov.uk/fire/publications/statistics/

'At the moment we're looking at the local issues and just the bland figures of number of enforcement notices, number of alterations, notices, probations and so on and so forth doesn't really give us anything to enable us to do the job better.'

FRA

'[There has been a reduction in fires, but] that's nothing to do with the Order, it's the Arson Task Force and the way the fire engines are working. The FSO helps after the event, and we will be trying it in various places, but personally I don't think the FSO is actually reducing anything – it's the efforts of the people on arson reduction.'

FRA

'[Has the FSO improved fire safety?] No. Can we suggest that that's the case? Yes, because we've undertaken successful prosecution. Can we link those successful prosecutions to saving life? It would be anecdotal rather than substantive evidence.'

FRA

3.5 Cooperative arrangements between enforcers

Where different enforcers' roles are connected, the parties tend to have defined effective ways of working together to mutual advantage, based on local agreements and protocol advice from the centre. There are some calls for further clarification, or extensions of role, particularly in the case of licensed premises

Under the FSO, a number of organisations as described in section 2 have statutory enforcement responsibilities. The responsibility for each of these is defined within the FSO, but there are areas where the responsibilities may overlap (for example, in HMOs, where local authorities and FRAs have dual enforcement responsibilities – the FSO only applies to the common parts.

In these and other circumstances, FRAs reported they have been defining ways of working together with other enforcement authorities to ensure an effective regime and to make the best use of the different parties' time and expertise.

A sense of the breadth of relationships was given by one FRA, which reported:

'I have got a list of people that we regularly work alongside, and they include Care Standards Inspectorate for the Care Standards Act 2000; we work closely with the Local Authority Building Control for the Building Act and the Building Regulations. We work with the Licensing Authority under the Licensing Act, the Health and Safety Department, we also work with the private sector, Housing Renewal Schemes under the Housing Act, we work with Ofsted and we work with Approved Inspectors from the Building Department under the Building Regulations.'

FRA

Other FRAs also mentioned close relationships with Environmental Health Officers.

The most common links were between FRAs and local authorities; and the most widespread circumstances for working together in this respect were the requirements of sports grounds, the Licensing Act and the Housing Act.

The interviews with enforcers showed that the demarcation of enforcement responsibilities was generally understood clearly by the enforcers; and that formal or informal cooperative relationships are working well at the local level. Formal arrangements, based on joint protocols or Memorandums of Understanding, had been – or were being – put in place to help define working level arrangements.

However, there were some problems – described as ‘teething troubles’ – associated with the sharing of data between enforcers. There was concern among FRAs whose area of responsibility straddled more than one local authority area that different enforcement approaches could give rise to inconsistency and in those circumstances, some felt that more could be done to share good practice and improve data across local authority boundaries.

‘As a general statement, we work very well with our partner agencies, the local authorities, particularly in relation to building control, licensing and environmental health. I think there are still lessons to be learnt on ways to go in relation to data sharing protocols.’

FRA

‘[Some problems stem from] our internal management of the change, and getting the consistency across all of [our region]. And then you go from [local authority area] to [local authority area], and it’s different again ... But it’s a learning experience.’

FRA

In terms of enforcing fire safety in certain types of housing, FRAs were able to provide specialised knowledge and expertise through joint audit or inspection visits.

‘I don’t really see the point [in employing a dedicated person], with the working arrangement we’ve got with the Fire Service we’re already working with, I just can’t see the point. They’re doing this on a daily basis, every day, and we’re not.’

Local authority

The circumstances of specific cases often required enforcing authorities to work together. The enforcers interviewed usually reported that they had adopted an open dialogue approach, and considered it to work well and play an important part in securing desired outcomes.

'[Environmental Health] liaise with us quite closely. If they have problems that they can't solve, we will do joint visits with them. But most of the work we just pass over to them.'

FRA

However, some local authorities did raise a concern over the potential for confusion created by the definitions of enforcement responsibilities for FRAs and local authorities, which meant that unless enforcing authorities worked closely together, any enforcement action could be less effective than may be desirable.

At the time of this research, Local Authority Coordinators of Regulatory Services (LACORS)⁷ had worked together with others to develop protocols designed to help FRAs and local authorities define their joint working practices. LACORS had also recently circulated (with CFA and the Chartered Institute of Environmental Health (CIEH)) new national guidance on fire safety in residential accommodation, which was designed to ensure appropriate levels of fire safety, regardless of the relevant piece of legislation, for those who manage, give advice, enforce standards or live in certain types of housing.

Some local authorities expressed concern over their lack of expertise in fire safety, in connection with sports grounds (where they are defined as the enforcing authority). They were aware that their competence to enforce an adequate level of fire safety might be called into question by any 'responsible person' on whom they served an enforcement notice or sought to bring a prosecution under the FSO.

Those concerns prompted some local authorities interviewed to suggest that the responsibility for fire safety in sports grounds would more appropriately sit with the FRA. While FRAs tended to support this view, in practice it was normal for an FRA to work closely with local authorities and, where necessary, to offer technical expertise and personnel to deliver a reasonable outcome. A secondary local authority concern was that some FRAs might ultimately want to charge for this service.

At present, licences can be issued for certain types of premises, such as pubs and clubs, without any prior assessment of fire safety arrangements being undertaken as a pre-condition of issue. The premises come within the FSO's scope only after the licence is granted. Some FRAs interviewed wanted fire safety arrangements to be allowed to influence a licensing authority's decision on whether to issue a licence.

'I think there is a confusion about the relationship between the Licensing Act and the Fire Safety Order ... Now everything that's enforceable under the Fire Safety Order doesn't become part of the licence, and there is this 'moving goal post' around occupancy figures, and what is either public safety or the areas that the Police look after. They're not set within the conditions of the licence and I have concerns over that area.'

FRA

⁷ Local Authority Co-ordinators of Regulatory Services: www.lacors.gov.uk

'[Once it's open, we can] close it down. Prohibit the use of part of it. We have the powers under the [FSO] certainly to give them an action plan, to serve a prohibition notice, tick whatever level we feel is necessary. But that just seems a ludicrous way to do it.'

FRA

More positively, in terms of licensed premises, the FRA recognised that, compared with the general commercial context, both the Licensing Act and Housing Act offered a clear and unambiguous route to identifying the 'responsible person'.

'[Environmental Health Officers] obviously know who the 'responsible person' is, through either licensing or on the ground knowledge. We haven't really had an issue with identifying responsible person for HMOs.'

FRA

3.6 Views on fire risk assessment guidance from HM Government⁸

Enforcers have found the guidance documents produced by CLG to support 'responsible persons' comply with the FSO are useful internally (for training purposes) and to support the needs of the business community. Earlier delays in publication have been overcome. The evaluation suggests that most business people find the guidance comprehensible, appropriate and useful.

But, some FRAs call for a different, more prescriptive approach to guidance for the smallest businesses (who may also be new to the process of risk assessment, and to detailed fire safety considerations).

CLG closely worked with FRAs and with a range of other organisations to produce a suite of technical guidance documents, each offering detailed premises based advice on appropriate fire safety standards to consider when carrying out and implementing a fire safety risk assessment. The guidance was developed particularly with the needs of small and medium sized enterprises (SME) businesses in mind, and to benefit those who had not previously been covered by fire safety legislation.

While the guidance indicated that third party expertise may be beneficial in some circumstances, it was drafted on the basis that, in many cases, a fire safety risk assessment and the subsequent implementation of appropriate measures did not require specific technical expertise in fire safety. As a result, it focused on the perceived need of those for whom the duty to carry out a risk assessment represents a new responsibility, and sought to demystify the process. It also offered comprehensive advice on the range of measures that should be considered in order to deliver an adequate standard of compliance in the majority of premises.

⁸ Guidance can be found at: www.communities.gov.uk/firesafety

Most of the guidance documents were published before the FSO came into effect, although some were delayed to the spring of 2007. The final guide was published in October 2007. All the guides are available to order or download from the CLG website, and it is common practice for FRAs to have established links to that source from their own websites.

The research explored FRAs' views on the HM Government (CLG) suite of guidance, now that they had had time to become established with and used by responsible persons; and to understand how the documents were being used within the FRA itself.

All of the FRAs interviewed were aware of the guidance documents, and all had adopted them as support for businesses to use. The suite of publications was generally well received, although with some reservations about details of presentation and timeliness.

'They're cut and pasted from all previous fire safety legislation really, and it's quite well done in that really it's taken the middle road risk, you've got the high and the low and the middle road really. It's quite well thought out.'

FRA

These FRAs had used the Government guidance documents as a training resource for their technical fire safety staff to support the transition to the new goal-based compliance regime. This led to criticism of the delay in issuing some of the documents, because some premises types had not been covered until late in the FSO's implementation.

'The problem with the guides is that they were too late; they were way too late to get our people trained in their use ... which was a big hindrance to us.'

FRA

Some FRAs expressed reservations about the presentation of the guidance and comments and that it was daunting and might not easily be understood by a 'lay person' or someone without a grounding or background in fire safety.

'Somebody who's had a Fire Certificated background can interpret and pick their way through the Guidance that's provided. But not for somebody who's picking it up for the first time without any background, without any training.'

FRA

Some FRAs felt there was a need for greater clarity in specific parts of the guidance suite – notably the sleeping accommodation guide. Under the FSO, many businesses offering accommodation were brought within the scope of fire safety legislation for the first time, and some FRAs felt that it might have been helpful to those in that category to have had some guidance which specifically addressed this less technical audience.

'As you're probably aware, Government are looking at giving extra guidance on small B&Bs and holiday homes, and that's something that came from the industry itself, because they were confused because the guides didn't adequately cover those type of premises.'

FRA

FRA's promote the use of Government guidance to responsible persons in a variety of ways – for example in person, on websites and at seminars. The guides were usually regarded as a useful tool for helping responsible persons to understand and carry out their responsibilities under the FSO. Some FRA's felt, however, that despite the non-prescriptive approach of the FSO and the varying levels of risk, the needs of some enterprises would have been served better with the provision of simple 'tick-box style' instructions to follow.

'People have very pointed questions. Do I need a fire door? How many extinguishers do I need? The guidance does not answer that. A lot of people haven't looked at it in the first place, then they come back to us [after having looked at it] saying, "Well I have looked now and I still don't understand, can you come down and tell me?" ... We don't have time to go down there.'

FRA

Interestingly, interviews with responsible persons show that FRA's' assessment of some 'lay-person's' abilities might be overly pessimistic. Interviews with business respondents indicate that it was certainly possible for an untrained beginner to use and learn from the HM Government guidance documents and to feel confident that they had carried out a fair risk assessment and understood and acted on it.

3.7 Perceived extent of awareness of the FSO

Enforcers in specialised sectors know that the organisations they are responsible for are well aware of FSO and the duties it imposes.

FRA's, whose responsibilities include the mass of businesses, take a less favourable view. They feel – and some have measured – that awareness (and hence compliance) is by no means universal among businesses. They are keen to see further actions taken to build awareness, in the interest of safety, among smaller businesses generally (rather than in any particular sectors of commerce or industry).

HSE and CPIG, both interviewed as part of the scoping phase of this study, reported high levels of awareness of FSO and understanding of its requirements among those for whom they had the enforcement responsibility.

Those high levels of awareness and understanding were not felt to be matched among the general business population. FRAs consistently reported that awareness among businesses tended to be based on the size and nature of the enterprise concerned. FRAs' views were rooted in their own experience from audit visits, enquiries made of them and, in some cases, on evidence of surveys among their local business community.

The summary of views among FRAs was that:

- large businesses (those with more than 250 employees) were the most likely both to be aware and consider themselves to be compliant
- smaller businesses were less likely to be aware, although some of the smallest had heard of the FSO through their trade press or trade bodies, or from their dealings with specialist fire-related suppliers (extinguisher or alarm companies)
- the size of business (allied to general sophistication of management) was the important factor influencing awareness – rather than any observable difference between different sectors of industry or commerce
- those businesses that were covered under previous legislation (either for Fire Certificates, or under Workplace Regulations) were more likely to be aware and have complied than 'new remit' premises (those brought within the scope of the law for the first time); and
- awareness among some public sector organisations (schools, for example) was less than expected.

Another (non-FRA) enforcing authority echoed the view that organisations varied in terms of their degree of response to the FSO, depending on pre-existing management 'cultures' and attitudes.

'The likelihood of an organisation managing to carry out a successful risk assessment is linked to the existing culture within the organisation. Where an organisation gives serious consideration to their health and safety policy, this will generally be a good indication of the standard of their fire safety policy. It is all about having a safety culture in the organisation. As an inspector, it is possible to tell almost from the moment you walk into an organisation whether or not it is likely that their risk assessment is going to be up to standard.'

Non-FRA enforcing authority

The relationship between size of business on the one hand, and awareness of and response to the FSO on the other, is something which a qualitative study cannot reliably evaluate. It suggests an important design dimension for the later quantitative evaluation of the FSO. But some in the fire safety industry agreed that awareness of the FSO was probably related to size of business – and that smaller businesses are lagging behind larger ones.

'The national businesses have all heard of it. But even large-ish local companies – I think there's 20 per cent of them have still never heard of it. It's only when the Fire Service get in touch they realise there's an issue.'

Fire safety consultant

'Our data [derived from inspections of premises] indicates SMEs don't understand what's going on, don't understand their responsibility, are taking short cuts, probably have been doing that for many years – and it's come as a bit of a shock.'

FRA

The FRAs reported that awareness was generally lower among smaller businesses. But in addition, the level of awareness was influenced by an individual's previous experience, and sometimes by a person's general management approach and reading of business press, rather than by the nature of the business itself. This view was confirmed by some in the fire safety industry, in relation to a company's attitude to fire safety.

FRAs believed that a lack of awareness among businesses of the requirement to carry out a risk assessment was the biggest barrier to success of the FSO so far. Post-campaign tracking research by CLG in spring 2007 had indicated that around 60 per cent of SMEs were aware of the requirement on them to carry out a fire safety risk assessment and, where appropriate, to put in place measures to mitigate any identified risks. The FRAs interviewed here generally agreed that 60 per cent tallied either with their own estimates or with figures they had independently measured in a regional survey.

'I would think potentially yes [60 per cent is about right], and it depends on the words they were 'aware of their responsibilities'. . . . If we were to say they were aware of and fulfilled their responsibilities, I would suggest that it was probably less than 60 per cent. But aware of, yes, the majority 60 per cent I think probably are.'

FRA

Some, however, felt 60 per cent awareness was likely to be an over-estimate in their area.

'It's only anecdotal evidence, but the number of times that we have to advise people about risk assessments I would say it's in the minority of people who actually are aware of their responsibilities.'

FRA

According to FRAs, there appeared to be a specific potential for confusion among businesses that were operating from newly completed buildings. Although it is interesting to note that a number of businesses in this position are actively seeking advice from the FRA, others might wrongly assume building regulations and the approvals process meant their premises automatically complied with the FSO.

'I think that with some of the newer build or newer types of premises that come under the Order [people may not be aware or compliant] ... we get quite a few phone calls from people contacting us for advice asking about the legislation, does it apply to them etc.'

FRA

3.7.1 Raising awareness of the FSO

Among enforcers, only FRAs said they had undertaken any activities design to raise awareness of the FSO's requirements, and encourage compliance among businesses. For the most part, individual FRAs said they had undertaken this work because they felt that the business awareness achieved by the Government's national campaign was not enough.

'[We were] led to believe there would be quite an impact on the public [in] the roll-out. So the public awareness campaign should have been far more effective than it actually turned out to be. ... The feedback that we were getting from individuals [at audits] was that some of them were not aware of their requirement to carry out risk assessments under the new legislation. ... It wasn't the majority of individuals, because [most] had heard piecemeal [about] various changes. We created and implemented a roll-out strategy for business involvement, working with various partner groups to try and raise the awareness of it when it was implemented, but one of our concerns was the fact that the implementation programme wasn't as full as we would have liked.'

FRA

These activities had been locally driven, and used a range of techniques to engage and support local business communities, including:

- Radio advertisements
- Telemarketing
- Letters
- Seminars, road shows and forum sessions with specialist interest groups
- Liaison with local industry representatives (eg tourist board)
- Prominent areas on their own FRA website, and links to guidance documents.

There was considerable variation in the nature and scope of the awareness-building initiatives that different FRAs pursued. Some saw 'outreach' communication to specific groups as an effective way to target FSO information, so long as it could be delivered efficiently.

'We've probably had a couple of thousand people in now, since the Order came about – just bringing stakeholders in and giving them a flavour for their responsibilities ... We've targeted people through business forums, through our own groups, and through approaches from organisations. As an example: there was an association for community centres within [the county], and a member approached us and said "Can you come and talk to our community centre about the Fire Safety Order?" So we said to them, "Rather than just talking to you, can you get them all in a room and we'll come and talk with them." And that's what we did. Working men's clubs, they came to us in the same sort of way and said, "We're not really sure where our responsibilities lie". "Right, okay. Get hold of your secretaries, or whoever is responsible for your premises, in a room and we'll come and talk with them."'

FRA

Some of the FRAs interviewed in this study were continuing to run local initiatives with their business communities designed to build awareness and compliance. Each took their own approach but the target was typically smaller businesses. For example, one FRA had focused a campaign specifically on businesses with a relatively low risk profile. Its aim was to reach the large number of businesses that were (because of low individual risk) unlikely to be included in its own risk-based audit programme; but which it felt had probably not been made aware of the requirements via the 2006-07 national campaign.

'The Government's campaign to educate and inform, in the build-up to the [FSO], we didn't think it was as comprehensive as it could have been. And the use of [a telemarketing partner] seemed to make a lot of sense – it was fairly economical ... and we would get the message across to the relatively large number of smaller premises that we simply could not engage with, particularly if we're using the risk based approach.... but nevertheless we weren't satisfied that they had received the education or the information from CLG.'

FRA

In some cases, the FRA had evaluated the effect of their awareness raising activities using surveys or other feedback channels.

'In the last six months or so we've ... undertaken an education and awareness campaign with the smaller premises, the premises that are relatively low risk ... And we know the compliance rate in those 20,000 or so smaller premises has risen significantly and people have either subsequently carried out a fire risk assessment or were made aware of the need to do so. Some had already done so. So we're happy that the awareness of the smaller premises has risen significantly in the last 6 to 12 months with that campaign.'

FRA

Several FRAs commented that further campaign assistance from CLG or other central sources would be welcomed, although recognised that the scale of the sector made it difficult to target effectively with limited resources. Partnering – either nationally or at a local level – with specific SME trade associations and other bodies with access to the businesses community may offer effective communication opportunities and channels.

Several also felt that increased local business awareness may be effectively achieved in future through a strategy of seeking to publicise more widely the outcome of prosecutions under the FSO.

3.8 Relationships with 'responsible persons'

Enforcers recognise that the shift to a risk-based approach is a major change of culture in their work, and of their expectations of businesses. They tend to have sought a balance between pure enforcement and providing help and advice.

Over time, some have deliberately been less forthcoming with advice. But most continue to believe that certain business people, who exhibit interest and willingness should be helped and guided.

Nevertheless, publicised prosecutions are recognised as a powerful tool in continuing to build awareness and compliance, especially among some more resistant businesses. Legal enforcement can be felt to present problems, however, imposing new requirements for attention to details of procedure.

In particular circumstances, FRAs report uncertainty over who is the 'responsible person' in some cases. This arises typically where responsibility might lie at any of several places or levels within a large multi-site business. FRAs would welcome further clarification on this, whether it comes from new central guidelines, or the results of test cases in law.

3.8.1 Advice versus enforcement

All the FRAs interviewed took the view that the FSO had introduced a 'culture change' in their work. They felt the FSO gave them greater enforcement responsibilities and powers, but at the expense of the technical advice and support that they had previously been required to give to businesses under the certification regime.

'There's been quite a cultural change in our officers really, in that in the past we've always been somebody that goes and really does a lot of the inspection work for the client, giving fire safety advice and all the rest of it. Now we're more or less the fire police, we're policing fire safety and some of our officers have found that a difficult transition.'

The FSO is non-prescriptive about what fire safety measures will best deliver an adequate level of fire safety. It is for the 'responsible person' to carry out a risk assessment and to implement whatever arrangements they consider adequate to manage the risk. This is different from the previous regime where fire safety officers would tell businesses exactly what measures needed to be put in place to minimise the risk to life in certain types of premises, and once in place, issue a fire certificate.

The requirement under the FSO is for the FRA to enforce compliance with the provisions of the FSO based on an audit of an individual premise's risk assessment. This means they need to take a comprehensive view of all the measures in place and consider whether, taken together, they afford an adequate level of protection to those likely to be on the premises or in the vicinity. Where a fire safety officer considers an element of the protection in place is inadequate to satisfactorily address a particular risk, they can require the responsible person to consider and make improvements. Their advice of how to address the failing should not be prescriptive. Instead, it should allow the responsible person the flexibility to implement whatever solution they consider appropriate within the context of their risk assessment.

'We try to take a balanced view, and use the informal enforcement tools always as our 'first line of attack'. So we try to educate and communicate with the people. The first enforcement tool would be a letter saying 'Can you have a look at these areas and we'll be back in 12 months time'. The next line will be a letter saying 'You really need to have a look at these by this date'. Next level up is an action plan ... where we go in, identify some issues and then sit down with them and say 'Okay, these are the issues. Are we agreed that these are the things that we need to address?' 'Yes'. 'Okay. Well we'll agree timescale' Because you don't have to do everything at once: some things need doing straightaway; some things you can give six months, 12 months to deal with.'

FRA

In striking an appropriate balance between their enforcement and advisory responsibilities, it was clear that some FRAs felt there was potential for confusion. This was attributed, in part, to the FSO itself, which some felt was contradictory in this respect.

'It is quite odd: the legislation provides for us to give information to the community on the one hand, and then you have the other part of the legislation which places the duty on us to actually enforce the legislation ... it doesn't quite tie up.'

FRA

But, the FRAs generally accepted that advice should be offered when requested. This was particularly so when dealing with smaller businesses, and reflected FRAs' recognition that, in many of the premises that the FSO covered, the 'responsible person' was unlikely to be familiar or comfortable with risk assessment, or have the necessary technical expertise to consider what might be adequate in their circumstances.

'[We seek to] educate and inform first, and enforce second.'

FRA

Another factor determining the FRAs' approach in a specific case was an assessment of the 'responsible person's' attitude and responsiveness to fire safety in their premises.

'It is very rare that we will take enforcement action with someone who is willing to comply.'

FRA

'If you get the person who simply says "Well I don't think I have to do it. I can't be bothered with this. I've got other priorities;" well then you might be more inclined to serve an Enforcement Notice ... There's no point in trying to educate and coax them along and agree an action plan, if they're clearly not going to give it any credence.'

FRA

The FRAs felt that under the FSO, the advice they are offering is more general and less prescriptive than in the past: aiming to indicate where a solution may be found, rather to give specific recommendations or instructions.

'I think we are getting there now, we are getting that balance right. We are educating the staff better to be more helpful without accepting liability'.

FRA

'At the start we were given the impression that you go in, tell them what's wrong, and "it's your problem, you have got to sort it out". Then we have had slight conflict with the Enforcement Concord in the management model, which was suggesting you should be giving some advice on how to solve the problem – which we do now. We don't tell you how to solve it, but we give you some options, and we tell you where the problem is for instance.'

FRA

It is interesting to note that the 'responsible persons' interviewed often valued the opportunity to discuss fire safety arrangements in detailed terms with fire safety officers, and felt they were receiving useful advice on what to do to deliver an improved level of compliance. They were not necessarily aware of the restrictions imposed on fire safety officers over giving prescriptive advice, but all valued the advice that they had received and felt they had a right to expect the level of support that the FRA had made available.

Although some FRAs clearly felt their emphasis should be (and was) on encouraging responsible persons to comply, others appeared less disposed to help 'responsible persons' comply by providing advice and information, and leant more toward formal enforcement action.

'[A] number of people [have] got into the habit of [using us as a consultancy. [That's] their problem. The police don't issue you with a copy of the Highway Code, or indeed the car manual, how to do it. They just tell you were speeding or your rear brake light wasn't working.'

FRA

Both fire safety industry representative consultants and some of the organisations representing business interests felt that those FRAs who were less prepared to offer advice had misunderstood their role.

'This has come back again and again, that there's a misconception with [some] Fire and Rescue Services that they now no longer have the duty to give advice; and their stance is, "You do the risk assessment and we'll come and tell you if its suitable and sufficient ... but we'll not tell you how to do it."'

Consultant

'[The FRAs say] "We're here to enforce, not to give advice."'

Association

An alternative view was that an FRA's reluctance to offer advice to 'responsible persons' was an attempt to manage the risk of liability claims in the event of a fire in which the FRA had advised on appropriate fire safety measures.

'If they (the FRA) give advice and it's wrong they can be sued. Therefore they don't give it.'

Consultant

Some FRAs commented that in the early days of the FSO, they had adopted a more helpful advisory policy toward businesses. However, two years later, they were now less willing to make allowances for unfamiliarity with the FSO's provisions. They were therefore likely to set shorter timescales for businesses to make necessary improvements, and potentially would begin more formal enforcement action sooner than in the past.

'Previously we were giving them 12 months to install it, because it was unreasonable to expect them to install it in much less than that. As the legislation's got older, we've now reduced that to six months.'

FRA

3.8.2 Prosecutions

These FRAs generally agreed that prosecutions had an important part to play in their overall enforcement strategy. There were two reasons for this: first, individual actions would secure better fire protection in those specific cases; and second, the publicity that followed some high-profile prosecutions would positively affect fire safety across a broader business population.

There were, however, mixed views on using prosecutions under the FSO as a means to achieve compliance. Some FRAs commented that they were increasingly prepared to seek prosecutions for significant failings, but others expressed concern that their action might be challenged.

In this respect, FRAs' concerns centred on:

- identification of the responsible person

'[In a recent case] the company agreed that it was their fault, and accepted the fine. But the company are backing the Manager to say that he wasn't the 'responsible person', that it was the company's fault, [and their view is] he is the Manager but he hasn't got the responsibilities to have complied with the Order. But for some reason the company are defending it on the basis that the Order wasn't right, and defending it as a point of Law, on behalf of the Manager.'

FRA

- applying the correct procedures and ensuring the enforcement process was robust – including rules of evidence controlled by the Police and Criminal Evidence Act (PACE⁹)

'We have just been challenged with an appeal against a Prohibition Order that we issued ... Fortunately the people that did the original inspection and dealt with it were very experienced and trained Fire Safety Officers. If it had been something to do with a [fire] station, it would have got very messy. Fortunately as I say we are fairly confident, or very confident that we're on good ground.'

FRA

⁹ <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/>

'We are having to spend a lot more money on training, and legal training for PACE interviews. If we caution somebody on site, we have to follow the Police and Criminal Evidence Act to actually follow the prosecution through. You can't just take a few photos and say, "You are guilty" . If you are going to Court you have to prepare it in a similar standard that the Police do. So we call people in to the Fire Safety Centre and we have to interview them with a taped interview with witnesses, solicitors present ... When we go to Court, they don't challenge with the fire safety aspect, they challenge the fact that you didn't give the Caution correctly, you didn't do this, you didn't do that.'

FRA

- the consequence of tying up resources and taking officers away from other duties

'The amount of work and man hours that's gone into that, to get that from potential prosecution through to prosecution, it's horrendous really from our point of view.'

FRA

- the lack of a central register of enforcement actions

'We can caution people, give a Formal Caution, but there is no register for the Formal Cautions yet. CFOA are looking into it, and are hoping to get something done. Say the Manager of [a local retail branch] commits an offence and say if I give him a Formal Caution, which is to say "Don't do it again" . He could then move to another town, which is out of our area, commit exactly the same offence and unless they ask us, they wouldn't know that 12 months later he is doing the same thing.'

FRA

Concerns over the legal presentation of fire safety enforcement were not exclusive to FRAs. One local authority also sensed an impending new burden on resources in this context.

'I can see that maybe in the future that a lot of your resources are going to be tied up in the legal side of fire safety. Now, that is something that probably most fire brigades [didn't expect] and it was never discussed [earlier] ... but that's going to be an additional resource requirement. Because if you've got officers going to court, preparing cases for court, they're not actually doing audits and when you consider we've only got eleven and a half officers, you take three or four off the system and you've lost 30 or 40 per cent of your workforce.'

Local authority

Some FRAs felt that Magistrates' Courts could face real problems in considering cases brought under the FSO, because of unfamiliarity with the legislation and because they lacked access to detailed fire safety knowledge. In an attempt to improve outcomes one FRA reported that it had proactively worked with Magistrates to ensure a better understanding of the FSO.

'I've arranged to see the magistrates locally over the next few months. It was obvious from the one case that we had in court that the Magistrate, although he was good at the law, wasn't really aware of the history of fire safety legislation, and why this person had been brought to court for that offence and using that legislation. Yes, he could read the legislation, but he didn't know the history of it, and what the Fire Service does and why we have got it in there, and that needs to getting across to the magistrates probably needs some awareness that in fact it has changed and why it's changed.'

FRA

Some enforcers felt delays in the legal process acutely, because if a hearing was delayed, the enforcement notice was suspended, potentially leading to prolonged or increased fire risk.

3.8.3 Definition of 'responsible persons'

Under the FSO, the duty to carry out a fire safety risk assessment and implement and maintain appropriate fire safety measures lies with a 'responsible person'. The 'responsible person' is defined as the employer, or in cases where there is no employer, the 'responsible person' is the occupier or owner of the premises, or the person with control over the premises.

The FSO provides for cases where there will be more than one person subject to the provisions in the legislation, and states, where there is less than total control, that the level of responsibility will vary according to the degree to which control over safety can be exercised on the premises.

In most cases, the enforcing authorities had little or no difficulty identifying the 'responsible person' for premises. But some FRAs reported that occasions had arisen where the definition of a 'responsible person' represented a significant area of practical uncertainty for them. In particular, they and the business in question could disagree over who was the 'responsible person' for particular premises. Where such difficulties arose, they concern businesses occupying multiple sites, perhaps in more than one FRA area; or multi-use or multi-occupancy buildings. The view among those enforcers who had met such problems was that greater clarity would be helpful in identifying a 'responsible person'. There were some in the business community who shared that view (see section 4.11).

‘One of the major issues that we have is identifying the ‘responsible person’ ... it takes a lot of time and resources, quite often, to establish who exactly that person is and who to serve the notice on – so any work that could be done on clarifying that [would be welcomed].’

FRA

3.9 FRAs’ views of third party fire safety consultants

Enforcers believe that in many cases a ‘responsible person’ ought to be able to carry out their duties under the FSO without employing a third party specialist. Nevertheless, they recognise that it is a right to choose to use outside help if desired. Wary of the variable levels of competence that they have observed among such third parties, they would welcome an agreed system of licensing or accreditation for such agents.

Under the FSO, responsible persons are required to appoint one or more ‘competent persons’ to help them undertake the actions required by specific articles in the legislation. A ‘competent person’ is defined as someone who has sufficient training and experience or knowledge and other qualities to enable them to properly assist in undertaking specific preventative and protective measures. The level of necessary competence will vary according to the nature and complexity of the premises involved, and a ‘responsible person’ is allowed to nominate himself or herself into this role. The ‘competent person’, as defined by the FSO, is usually an employee of the ‘responsible person’.

However, where premises are higher risk, large or complex, or where the responsible person does not feel they have the necessary knowledge, they may appoint a third party to carry out the tasks required, including carrying out a risk assessment. Many commercial organisations offer fire safety services. Using a third party either to carry out the risk assessment or to implement fire safety measures, does not relieve the responsible person of criminal liability: enforcement action is taken against the ‘responsible person’.

The introduction of the FSO may have created a wider market for fire safety services. Many businesses said they had been targeted by a range of fire safety consultancies and specialist businesses offering support with compliance. Many have marketed themselves to micro and small-medium sized businesses, offering to carry out fire safety risk assessments. Indeed, such approaches were apparently an important route by which some smaller businesses had become aware of the FSO and its obligations.

Some FRAs described concerns they felt over the work of third party consultants or other commercial fire safety organisations. The central problem they raised was the variability in the perceived level of competence among these consultants.

'There are extremely good ones, and there are a few where our guys have gone out and basically found the documentation's been very, very poor. Lots of padding. We've found risk assessments that don't have any sort of action plan in them to address issues. They've identified issues, but they haven't highlighted what can be done about them, what sort of time frame needs to be adopted, that kind of thing. The significant findings are not drawn out of the document. Others are extremely good.'

FRA

'People tend to be lazy, or if they don't understand the regulations, "We'll pay and we'll get somebody else in." To be fair, some of the people out there, giving the advice, I don't think are qualified to do it.'

FRA

'One of the issues we have is that some individuals are buying risk assessments off the web – "If you have a boarding house, we will sell you a risk assessment for your boarding house". And it was basically just lifted from the web and printed, change the address and hand this in and say, "Well, this is what we do here."'

FRA

The FRAs' call for clarification of standards was echoed by some in the fire safety industry itself.

'The risk assessment is the whole essence of the [the FSO]. The 'responsible person' within a building is only responsible. He's not the knowledgeable person, he's not the competent person – so he has to rely on other people to come in and do it. And if those people aren't giving him the right advice, then the whole system really falls down, the whole of the legislation falls down.'

Fire safety consultant

'There is a need for one national accreditation scheme.'

Fire safety consultant

FRAs acknowledged that using a 'good' consultant can provide good value for money for some businesses. But they were not convinced that the third party approach was appropriate for most businesses. Instead, FRAs tended to believe that 'responsible persons' were likely to be best placed to assess the risk in their own premises, and to keep the assessment under review. FRAs stressed the importance of 'ownership' of the risk assessment, and subsequent management responsibility for implementing improved fire safety measures, and keeping them under review.

'I do believe that, for the longer term benefits of reducing risk across the business community and other users of buildings, the 'responsible person' (knowing the premises, knowing the nature of the occupancy) is best placed to carry out a suitable and sufficient fire risk assessment.'

FRA

Some FRAs felt that a lack of confidence among small businesses played into the hands of third parties, whose own competence was questionable, and created additional, unnecessary costs. Some FRAs also felt that some 'responsible persons', particularly in smaller enterprises, would lack the competence needed to understand the outcome and would be unable to identify shoddy or deficient work. This meant not only a financial loss to the business (sometimes compounded by the over-specification or inappropriateness of particular fire safety measures) but also that the fire risk in these premises was not being adequately managed.

'It doesn't take a great deal of time to sit down and do a risk assessment for [some small premises]. But some people feel they so much want to obey the regulations and the law that they're inclined to get somebody in who they think is an expert. And when you get them in, they're just people that jump on the bandwagon and they don't know anything more about it than what [their clients] do. But they've just got this book that they use, the guide, and apply the guide, and sometimes they [over-recommend]. If the fire service came round, it would be much more flexible and much more tolerant and much more understanding, and we would be prepared to reduce some of the things that have been asked for.'

FRA

'If ['responsible persons'] don't feel confident, then, fine, they can outsource it. But I don't see the need.'

FRA

The FRAs generally wanted 'responsible persons' to have help in choosing reliable and reputable agencies to help them fulfil their FSO responsibilities. They perceived the need for these services to be greatest in smaller enterprises, where health and safety management was not a specialist function, where risk assessment was not an established discipline; and where the nature of the fire risk was often 'generic'. But the FRAs felt they would be exceeding their remit if they were to recommend particular agencies or consultants, and that potentially they could incur liability claims if their recommended agent failed to perform adequately. Nevertheless, there were instances where they were prepared to point responsible persons towards the services available.

'Some of them [the consultants] are excellent and some of them help. Actually in certain instances, I was very cautiously saying to people, "Look, if you're not happy doing it yourself, there are plenty of people out there who could help you."'

FRA

While the FRAs recognised and welcomed the existence and development of registers of quality assured fire safety services, several said that a national scheme of accreditation or licensing would be helpful and preferable.

'There is no regulation. You don't have to have any qualification or anything like that, to go out and do Risk Assessments. The better ones are member of the IFE or FPA¹⁰ and do have accreditation, but you don't have to have that.'

FRA

'If anybody who did the Risk Assessment had some form of qualification that was nationally accepted ... a CORGI gas installer, that's a good system, it works. Something like that would be better.'

FRA

'I know there's the Institute of Fire Engineers and third party accreditation and things like that. But really there needs to be something to stop amateur people taking money under false pretences, because it's not small amounts of money. People are spending £400 or £500, and what background have these people got?'

FRA

3.10 Areas for further support or improvement

As noted earlier, enforcers generally welcomed the FSO as a powerful and enabling set of legislation that would improve fire safety. That said, our commentary above has noted several areas where some enforcers called for greater clarity or support. In summary these were:

- the need for new or continued efforts to raise awareness of the FSO and its requirements among businesses – particularly SMEs
- the need for greater clarity (or test cases) that would unambiguously define the 'responsible person' – particularly for larger multi-site enterprises; and
- the desire for better regulation or accreditation of third-party fire safety companies.

¹⁰ IFE – Institute of Engineers
FPA – Fire Protection Association

Chapter 4

'Responsible persons' experience and perceptions

4.1 Overview

There were wide variations in the experience, perceptions and views among the businesses interviewed. In qualitative research, no attempt can be made to present an 'average', 'typical' or 'majority' view. Inevitably, on many of the following subjects, we are bound to offer findings that take the form 'Some people said this, while others said that'. Nevertheless, understanding the breadth of views and experiences will be important in designing a successful evaluation later on.

This is a qualitative rather than quantitative research study. That means that it sets out to explore and identify the *range* of views, beliefs and behaviours in the population, rather than to enumerate them. It compares and contrasts different people's responses, and does not (indeed cannot) assess their relative prevalence. There are therefore no 'typical' or 'average' responses here, nor 'majority' and 'minority' views. Neither the sampling nor interviewing process was designed to allow such numerical inferences to be made.

Instead, by illuminating the different ways that people perceive and act upon the FSO, this study is designed to inform a future evaluation of those differing perceptions and actions.

These points need special emphasis in the present case, because despite a substantial sample size (in terms of qualitative research) there was often little consensus among the people interviewed. Instead, there were wide variations in experience, perceptions and views among the businesses interviewed – as might be expected when the businesses under examination ranged from well-known international enterprises to small corner shops.

4.2 About the respondents

Forty-five 'responsible persons' were interviewed for the main stage of this study: 34 responsible for premises where fewer than 250 people were employed, and 11 responsible for larger enterprises or premises. Appendix D includes a more detailed breakdown.

There was some potential for confusion between these categories and the notion of SMEs (enterprises employing fewer than 250 people), because in some cases, the person interviewed was alone responsible for premises that would qualify as an SME; but could be part of a larger business group which in aggregate would be larger than an SME. In such cases (for example, a small nursing home within a larger national group) we have preferred to define the size of organisation in terms of the premises (and employee numbers) that the interviewee was responsible for.

In each case, the person interviewed was the person who put themselves forward as responsible for fire safety in their organisation. Their fire safety responsibilities were apparent partly from the responsibilities that fell on them in their employment; and partly from their job title (in larger businesses) or because they were the chief executive, owner or sole trader in smaller ones.

In the smaller businesses, the interviewees usually had no specific training in or knowledge of fire safety. In larger businesses, several were Health and Safety, or Health Safety and Fire managers. A very few among the largest businesses were fire specialists within departments that covered those broader safety functions. One was a former FRA fire safety officer who had moved into industry. So, confidence in talking about the technicalities of fire safety (and of risk assessment) tended to be greater in larger businesses.

For the same reasons, those in larger businesses were noticeably more comfortable with the idea of risk assessment than those in smaller businesses. But there were exceptions to this: some, in large businesses, had outsourced their fire risk assessment because they felt it required a greater technical insight than they possessed, and some in small businesses had overcome their initial uncertainty about risk assessment, carried the work out (with guidance, usually) and felt pleased with, even proud of, the result. Repeating the work would hold few qualms for them.

4.3 Awareness and understanding of the FSO

Awareness of the FSO and its requirements was not universal among businesses. Smaller businesses were generally less well-informed about the FSO than larger ones, and were in general less familiar with the tasks (risk assessment) and expertise (in fire safety) that it demanded of them. Nevertheless, some SMEs have been able to carry out and act upon their own risk assessment, drawing upon guidance from a range of sources, but FRAs especially.

4.3.1 Awareness and its sources

Our sample included several people who had not heard of the FSO – and unsurprisingly had therefore done nothing to comply with it. That lack of awareness was only found among the smallest businesses, and usually those (such as small traditional retailers) in which management is a less sophisticated practice. Some, but not all, of those respondents were people who were generally uninformed about business, or even hostile to administrative or ‘bureaucratic’ requirements. But we also encountered some people running similarly small businesses who showed a good grasp of the FSO, and had fulfilled their duties to comply in a detailed manner.

So it may be difficult to ‘pigeon hole’ businesses and ‘responsible persons’ awareness in any predictive way, beyond noting that ignorance of the FSO was not found among larger businesses.

Awareness of the FSO also seemed to be higher in those businesses (of whatever size) that considered their fire risk to be higher. So those providing sleeping accommodation, from large hospitals to bed and breakfast operators, tended to be aware of the FSO and to have acted on it.

As for the *level* of awareness that prevails, this study is not designed to measure that. But it is clear that these findings tend to conform to the prevailing view that awareness is not universal.

How people had become aware of the FSO appeared to differ depending on the size of their business, and hence on their exposure to different types of commercial information.

Those interviewed in larger enterprises were generally safety ‘professionals’. They were well aware of the FSO and appeared to have closely followed the Government’s progress in implementing the new regime. Larger organisations’ information on the FSO came through a range of sources including:

- their professional bodies and associated journals
- business press
- building controllers and other professional associates
- the internet
- the broader commercial safety ‘network’.

Those with fire safety responsibilities in larger enterprises welcomed the proactive approach to maintaining and promoting awareness of the FSO taken by their professional bodies.

'The bodies that we are members of, Institution of Occupational Safety and Health and people like that, are very good at putting those things in.'

Larger enterprise

Some reported seeing publicity material from third parties about the FSO.

'I had information coming at me from lots of companies who approached me offering things like fire safety courses. They let us know that the law was changing and I heard about it through magazines I was sent etc.'

Large accommodation provider

Some larger organisations reported that they had used the long lead-time prior to the FSO's introduction to research its requirements and assess both its implications and the potential impact on their business. Where necessary, they had put in place new or revised procedures which they believed would constitute compliance.

'We were doing a bit more than the old Fire Precautions Act needed anyway. Certainly a couple of years before the Order became law, we were aware that the Fire Certificate was going to disappear, so we were working on beefing up our risk assessment process well before the Order came into being. So on the actual day, we had most of our systems in place, or we'd thought about it and were well aware of what we needed to do. We'd done a lot of research into it, we'd read the draft guidance, commented on that, all this sort of thing. We were heavily into what was going on, because we like to stay ahead, we don't like surprises.'

Large retailer

As noted above, awareness among smaller enterprises was somewhat patchy. Some were completely unaware of the FSO; others were unaware of the legislation but recognised that they needed to consider and put in place fire safety arrangements for those on their premises. Others again, while aware of the FSO reported that they had done nothing to comply with them. Finally, some felt they had taken a very diligent approach to their compliance.

Some of those interviewed from bodies in the fire safety industry, who were exposed to companies across a range of sizes, suggested that it might not be the smallest or the largest, but those in between where awareness of FSO is weakest.

'You find that the small businesses, who are subject to sales by fire extinguisher salesmen, know that something is going on, or they have been copied in on circulars from the Federation of Small Businesses ... and the very big companies we hope are competent. But we keep on finding people who are not. The problem is the middle ground, I think, who are either too busy to look or have not necessarily heard about it in the first place.'

Association

‘The national businesses have all heard of it. But even large-ish local companies – I think there’s 20 per cent of them have still never heard of it. It’s only when the Fire Service get in touch they realise there’s an issue.’

Consultant

Among small businesses, the original source of awareness of the FSO was often (after two years) very hard to pin down. Respondents recalled a variety of ways they had heard of it, including via trade publications and communications from their trade associations, extinguisher service companies and property management companies. One had first heard of the FSO in a letter from the FRA advising them of an impending audit visit.

Several mentioned they had received sales fliers from third-party organisations around the time of implementation.

‘At that time, all of the companies were getting on the bandwagon [and] sent out glossy brochures, saying ‘You’ll be breaking the law if you haven’t done this by such-and-such a date, and we can actually run this course that you and your team can go on to obviously get you up to speed with what you have to do’. And there were dozens and dozens, literally hundreds of those.’

SME

Both representatives from the fire safety industry and the trade associations we interviewed reported their view that awareness of the existence and requirements of the FSO was not yet universal among SME businesses.

‘Well I would say 60 per cent [of responsible persons] don’t know [that they have to do a risk assessment].’

Association

4.3.2 Understanding of the FSO

Enterprises offered differing interpretations of FSO, and some of the variation in views appeared to depend on the sizes of businesses.

Smaller businesses tended to see the new legislation in terms of the *processes* it required of them for compliance.

Medium-sized businesses offered in addition a perspective on the *principles* implicit in the change, which they saw as:

- putting the onus on the business
- taking active responsibility
- a comprehensive review of fire safety throughout the business (and its people)

The largest organisations, with their more sophisticated operation of health and safety related procedures, and a more integrated approach to managing risks, the FSO could be interpreted as an organic change, an evolution that extended existing ethics and practices (already required under the Workplace Regulations) into the fire area, rather than being an abrupt and novel change.

'Originally it was the fire precautions, and then it's the Workplace Regulations 1997 – and because we're a retail business, we apply the risk assessment process under those Workplace Regulations. And then this 2005 Order really just added some further areas to be considered.'

Multiple retailer

4.4 The principle of risk assessment

So long as they were aware of the FSO, these businesses recognised that the new regulations took some responsibility for fire safety away from the FRA and placed it on themselves.

Interviewees expressed a range of views, for and against the principles and practices contained in that change. There were mixed views on whether the principles underpinning the FSO were right and fair.

Almost all larger organisations felt that the FSO had worked well overall in meeting its aims, which were seen as improving fire safety, by placing upon them the responsibility for managing the risks on their premises.

'I think it's done a lot of what it wanted to do, which was get rid of all the different bits of fire legislation and bring it all under one umbrella. I think by putting the onus on businesses, we can put in solutions to suit us – obviously with discussion and approval. I think it is a benefit, and I do believe we are probably safer from a fire point of view now than we were a few years back.'

Large retailer

Some medium-sized, and most larger businesses tended to see the FSO requirements as similar in kind to their existing obligations in other areas, for example under Health and Safety Regulations, and therefore helpful in bringing greater consistency across their operation. They were also more familiar and comfortable with risk assessment as a procedure than their smaller counterparts.

'I think it has improved fire safety. I think everybody is a lot more aware of it. Because now you can't say "We've got a Fire Certificate so it's fine." Now I can say "We have got to do a fire risk assessment on it, you can't just rely on how it used to be. You've got to look at it how it is now." And if we're not happy we can push for improvements. So it has given us that tool.'

Large enterprise

Those interviewed in the fire safety industry tended to take a similar positive view, while acknowledging that it was too early to judge the real effectiveness of the FSO.

'That's got to be a positive thing, and the whole change of emphasis ... from the Fire Precautions Act ... to the risk assessment based approach, where the responsibility is on the building owner/occupier or responsible person: I think that's a good move because it's raised the profile of fire safety within businesses. So surely the benefit, the net, the big win, is going to be on fire prevention, the actual occurrence of fire should reduce and only time will tell when we get statistics back to see if that's happened.'

Fire safety consultant

'It's too early to say ... there's only 25 or so people die [from fires] each year in commercial buildings.'

Association

One interviewee suggested that because risk assessment and management is a familiar concept for many larger businesses, some organisations might understand its practicalities better than the some of the enforcing authorities.

'I think the concept of risk assessment is new to a lot of the brigades. They are trying to get their heads round it, and the idea that it's not prescriptive. I think that still needs some work on it – on both sides really. Some people on our side too will say, "Well I prefer you to tell me exactly what I've got to do", and they sometimes find it difficult to understand that they've got to make that decision.'

National retailer

Some respondents whose premises had been audited by the FRA were concerned at the approach that had been taken by the fire safety officer, and queried whether the enforcing authorities themselves had sufficient understanding of risk assessment and the necessary skills in place to assess the extent to which individual premises may be compliant.

'There's no set way of carrying out a risk assessment, but they do look for a standard document and, if they don't see that, then the enforcing officers start to have concerns ... In most cases I've said "Well have you actually looked at our risk assessment in detail?" ... "Well, I've not" ... "So why are you now saying you think it's not suitable and sufficient?" I don't think as a business they've been used to risk assessments themselves ... They're still sticking with "We want very high, rigid standards."'

National retailer

'We tend to find that you get operational firefighters doing the audits as well, and then having to refer back to the Fire Safety section of the Fire Authority. So it's as though they're using the general troops out there to carry out the audits ... and they may not have the necessary knowledge about fire safety itself.'

National retailer

But even in large businesses, non-specialist building managers with responsibility for fire safety could be baffled by the complexity and perceived 'looseness' of the risk assessment requirement.

'I think it is more onerous on us to manage, because we have to go and do the health and safety, we have to do the risk assessment and keep up the strategies for management. And it's also difficult to know if you have got it right or wrong because beforehand you got the fire guy who came round and gave you the certificate and said 'Yes you're doing everything fine,' and you knew you were safe providing you followed what had been agreed.'

Larger enterprise

One national retailer commented that the risk assessment principle could be problematic, for example in the case of fire safety responsibilities in new buildings.

'I think where we get a bit of confusion is between ourselves and the people who build stores, warehouses, the building control side, around the area of what is a risk assessment. You get people saying "This building is being built to Building Regs so it's fine, it's safe." And then from a safety point of view, they will turn around and say, "Well, no it's not, because that's not a fire risk assessment, building it to the Building Regs." You've got to consider what's in there, how it's used, the people etc. That still seems to be a bit of a sticking point.'

National retailer

Smaller businesses showed less agreement with each other than larger ones on the principles behind the FSO. Those in smaller organisations expressed a mix of views on whether it was right or appropriate for businesses to have the primary responsibility for fire safety. Several of those interviewed in this segment of the business community (ie outside the largest enterprises) had not previously been familiar with the concept of risk assessment in any context.

Some SMEs felt the FSO was easier to understand and to comply with and that it was comprehensive about specific requirements. They reported that their own level of fire safety had improved, along with that of their staff, and the consequential raised awareness had driven an overall improvement.

'In the old days, you got the Fire Certificate, everybody watched a DVD ... and that was it. But there's rarely a fire or an incident – but when there is, it's big. People have forgotten what they've learned, because you're not using it every day as a skill or as a training package. If it's broken down into different categories, then we can do a more extensive training, there's a higher awareness...we can discuss scenarios...we have drills regularly, and I think it actually heightens the awareness. I know all my staff will know where my risk assessment folders are, and they'll be able to break down risk.'

SME

'It's the company's responsibility anyway ... therefore it's only right that the company should invest in fire safety and ensure regular inspections are carried out.'

SME

In some of the medium and smaller businesses, respondents felt the FSO offered a more effective regulatory framework with active rather than passive involvement on the part of the business, and the potential to keep pace with a dynamic commercial environment.

'If the fire officer came round and gave you a Fire Certificate, six months down the line you could knock down a wall and redevelop it, and it might not stand up to the risk they gave you the Fire Certificate for in the first place... They weren't really worth the paper they were printed on.'

SME

Some businesses, however, irrespective of size, missed the certainty and confidence they felt had been inherent with the fire certificates issued to certain designated businesses under the 1971 Act. Some others, who were brought within the scope of fire safety law for the first time by the FSO, lacked confidence about their capacity to carry out an appropriate risk assessment. This was compounded, in some cases, by a perception that greater fire safety expertise than they possessed was needed to carry out a proper risk assessment and that this was likely to compromise the overall level of fire safety.

'My perception of a risk would be different from somebody else's, and that perception is always down to how well you've been trained. If you haven't been trained correctly, you won't be looking for the correct things. Therefore you could leave yourself with a risk, or be left liable for something.'

SME accommodation

'Actually I quite liked the old regime of having an annual inspection, to give me that peace of mind that everything is being done properly and externally validated ... A badly run place could now get away with more than they could before, and that's not necessarily a good thing.'

Larger enterprise

'They're trying to make it simpler, but I think it could be made simpler by [having] a standard set of forms, and you say what category you're in ... There's loads of properties of the type that I work in. Somebody could write that up and say "This complies with the regulations." If you could complete that standard form, Bob's your uncle. At the moment I'm trying to cobble things together. I know, hand on heart, that I'm keeping a safe building, but in terms of documentation I fall terribly short.'

Larger organisation

Some of the larger organisations, too, felt uncomfortable with the lack of hard and fast fire safety rules, which would result in individual interpretations of the level of risk being made.

'There's no real right or wrong ... but it's obviously the enforcers who have the power to decide whether it's suitable and sufficient in their minds.'

Large enterprise

Medium and large organisations tended to differ from smaller ones in this respect, in that they recognised that some additional expertise might be needed and were prepared, or able, either to buy in the required expertise, or develop a fire safety specialism in-house.

'It's 'another job for us to do' would be my gripe ... by doing it yourself, and being responsible for things, you get to know your building and the issues involved. But as a head teacher my background is in teaching, so suddenly to have to produce fire risk assessments and conform to current legislation, it's another job that you have to do – and that's why we welcome the help from the property management company that we buy into, because there's only so many hours in the day.'

School

Irrespective of size, all of those interviewed who were involved in providing sleeping accommodation were aware of the need to take particular account of the needs of guests and those likely to be sleeping on the premises. These imposed special considerations when carrying out a risk assessment and implementing fire safety measures, and keeping them under review.

'We have a general risk assessment that covers residents, staff and visitors, and then when we do our risk assessment of the building, we assume a certain level of mobility and competence as a standard. Then when each resident moves in, if they have impaired mobility or may have a hearing impairment, or whatever their issue may be, their personal risk assessment then gets altered, to incorporate the risk around fire with the general fire risk assessment for the building at a general level.'

SME – hostel

Some of those interviewed also reported that they welcomed the application of the FSO to all businesses.

'I think it's better that everybody is included now, because before I was rather puzzled by the fact that only businesses like mine, who were letting to more than six people, were subject to the fire regulations ... You didn't have to have a fire certificate if you let rooms to fewer than six people... I just couldn't see the sense.'

SME accommodation

One SME respondent, managing a nursing home, felt the FSO's degree of success in reducing fire risk would depend on how much external supervision an organisation was subject to. In the case of nursing and care homes, for example, businesses were already regulated by the Commission for Social Care Inspection (CSCI). Fire safety was one of the subjects the CSCI gave specific attention to as part of its periodic inspections.

'For the nursing home sector, it possibly will [improve safety]... The industry I'm in is heavily regulated, so there are at least two other agencies seeing if I comply with a whole range of issues. But I don't think in general terms other businesses are regulated in the same manner.'

SME

A fire safety officer felt that in implementing the FSO there had been too much emphasis on the risk assessment process, rather than on the subsequent actions taken to reduce risk.

'Risk assessment is just a starting point. People do the risk assessment and think they've complied, whereas they haven't acted on the findings.'

Larger organisation

But several respondents in larger organisations – and particularly those with a Fire Service background – questioned whether the FSO was providing an effective improvement to fire safety. Their reservations tended to be expressed in terms of other businesses' failing to comply (rather than their own). They were particularly worried by what they perceived as the problems FSO requirements would pose for small businesses.

4.5 Fire risk assessment in practice

Risk assessment is a well-established management discipline, in health and safety and a variety of other contexts. Its prevalence, however, apparently varied considerably – being well-known and regularly practised in the largest organisations, and those of any size whose management disciplines were more sophisticated. In some small businesses, however, it was essentially unknown before the advent of the FSO.

That said, almost all of even the smallest businesses had carried out research, used guidance, and managed to fulfil the requirement, usually without direct (paid) help from outside. Where outside help had been employed, it tended to be among businesses that could afford it, and lacked the confidence to do it themselves.

4.5.1 Previous experience of risk assessment

For respondents in the smallest businesses, risk assessment appeared to be a largely unknown procedure before the FSO required it. Most of them had no previous experience of risk assessment, for any purpose.

In medium enterprises, some respondents were already familiar with the process, typically derived from their health and safety responsibilities. If they were not themselves experienced, some said they could draw upon help from colleagues who had health and safety experience. But despite extensive experience of risk assessments in the health and safety context, some in medium enterprises said they would, or had delegated fire risk assessment to outside specialists. They chose to do this because they felt they lacked specialist knowledge of *fire* risks specifically.

Everyone interviewed in the largest organisations had personal experience of risk assessment as a management process (especially in health, safety and environmental contexts), although not necessarily relating to fire risks.

4.5.2 Risk assessment under the FSO

All but three of the respondents who were aware of the need to carry out a fire safety risk assessment had recorded it in writing – the exceptions were the smallest businesses.

Among smaller businesses, with fewer than 25 employees, the risk assessment had usually been done by the person interviewed, and usually without drawing on outside help (even from colleagues). This was despite some people's misgivings over their own competence.

'It was really, well, "We'll have a go, and see what happens. If we have any questions, we'll go and ask the specific what about this?" kind of scenario. But it was a bit "feeling your way in the dark" type of thing. I didn't feel like I knew exactly what I should be looking for.'

SME

One respondent from such an enterprise (who was not a specialist in fire or safety) felt that the risk assessment process was more effective if *not done alone*, and had been improved by being shared with a team in the organisation.

'When you're writing a risk assessment, you can get a global view if you sit with a team ... You can actually use it as a teaching exercise, to bond the team as opposed to the, I don't know, the moaning and groaning.'

SME

Medium-sized enterprises seemed to be the group most likely to have drawn on outside help with their fire risk assessment, although this suggestion would need validation from a much larger survey sample. It was certainly the view among FRAs that, when considering outside help, the largest businesses 'didn't need it', and the smallest 'couldn't afford it'; and that it was in between these that third party consultants tended to be more successful in winning business.

By contrast with their smaller counterparts, fire risk assessment in larger businesses was seen as part of the broader range of safety-related risk management. The concept behind the FSO sat comfortably within the same disciplines and procedures as other HSE-related procedures.

Some of the large organisations were of such a size that the required risk assessments had been carried out at several different points across the organisation, and then collated centrally by the respondent. In some cases, this procedure had included a hierarchical approach, with a 'generic' company-wide risk assessment (carried out at the centre), under which were nested the individual branch or office assessments done locally.

In some large organisations, those carrying out all the risk assessments were employees with appropriate qualifications.

'Other than their normal [National Examination Board in Occupational Safety and Health] diploma, which includes fire, they have no other expertise. However, we do obviously use reputable people to install our fire extinguishers etc. I've never felt the need for us to employ any fire specialists.'

Large enterprise

In others, who had followed a more hierarchical approach, risk assessments at branch or office level had been carried out by local (non-specialist) managers, under guidance from the centre. Some reported this approach helped to devolve responsibility, and thereby deliver greater 'buy-in' across the organisation.

'It has clarified the position where we are actually checking for the risk of a fire throughout the homes, and it's brought it more to the attention of the individual managers as well. They've been involved in doing the risk assessments.'

Large enterprise

In the largest organisations, some spread across many sites, the whole risk assessment documentation 'suite' could involve a combination of inputs from several parties – buildings professionals, store managers and outside consultants.

'We have a document which lays out [all the technical specifications of a store's alarms and fire systems]. The store manager does a regular monthly inspection [of stock levels and locations, access to fire routes, etc]. We then also have an external consultancy which goes around on a three to four year cycle visiting each of our stores, and it is an outside pair of eyes. So they not only look at how the store is being run and used, but also they'll look at the fabric to make sure it is still the way it was built; that nobody has put a door where they shouldn't have, or knocked a hole through a wall. These things can happen occasionally. In addition to that we've also got five regional health and safety advisers, and they do regular checks and inspections in the stores, and obviously one of the things they will also look at is fire safety'

National retailer

In one multi-site enterprise, all premises had carried out risk assessments individually, using advice from their central fire officer, and in some cases from contacts within the FRA. That respondent observed that the advice from the FRA tended to be 'more vague than it needs to be', apparently to avoid a conflict of interests and the possibility of giving wrong or inadequate advice.

One large retailer, which operated from properties with widely differing attributes, described a system it had developed which targeted its estate differently based on assessed level and nature of risk.

'We will try to visit a store at least once a year. If it's what we class as a store with problems, it will be more frequently. We know that some of our stores are newly built, they're large, they've got all the precautions we need, they might go into a retail park, they can deal with all the stock that comes in even at Christmas time. We know that we've got a good manager because we know our managers, so we are quite happy. But we've got other stores which are small, they're poky, there's not a lot of space for stock. So we class them as red. We have red, amber, green stores. It's a simple way of doing it.'

National retailer

4.5.3 Confidence in carrying out one's own risk assessment

The majority of the businesses interviewed (both SMEs and larger) had carried out their risk assessments in-house – and in every case the respondent had had at least a part to play in that process. In many cases they personally had carried it out entirely.

Some businesses had used third parties, or consultants to carry out the risk assessment and their experience is set out in section 4.9.

In the larger, and several of the medium-sized enterprises, the respondents themselves felt qualified and competent to do the work themselves, by virtue of their background or training.

But, some smaller businesses continued to express doubts about their own expertise in assessing fire risk, and were strongly in favour of getting help.

'I know it's meant to be self-assessment now, but I think that's difficult because other people wouldn't have any idea about what they should do, so I think it should be an assessment by the fire service really, to tell you what to do, because otherwise how are you supposed to know?'

SME

Some SMEs recognised their own operational knowledge was invaluable in the risk assessment, but felt they would be more confident if there was a second supervisory check available.

'I understand that I (and my staff) know my service the best. So for us to do the risk assessment, to understand how the building works, how service users interact and the flow of movement around, that makes sense for us to do the work. But it would still be nice if somebody was to sign it off and say, "Yes, you have stopped the risks. Yes, your management strategies are correct", and then you would at least know that you'd done it right and there were no gaps anywhere.'

SME

Confidence had clearly been boosted in one business by the respondent's attendance at a one-day risk assessment training course.

'I am comfortable with the non-prescriptive approach as I had the one-day training course, and I feel I have done a competent, thorough fire risk assessment including a better staff training package.'

SME

In another case, a respondent had been able to borrow a DVD about risk assessment from a colleague in health and safety, and had found that a great boost to confidence, even though it treated a different subject.

Most businesses that had chosen to use an outside agency for risk assessment did not feel they would take that work on themselves in future.

Among SMEs, this was because they would still feel the same lack of expertise. For some, the reluctance stemmed from their view that this was a 'high-stakes' aspect of performance.

'Well I wouldn't want to. [I had a letter from] the county's Chief Fire Officer and he advised me that "You're the fire person, and if something does go wrong then you're the one that's responsible." So I'd rather have somebody who knows what they're doing take the blame.'

SME

Despite having paid for at least one risk assessment (which they might have used as a model to follow), some SMEs felt they would still want or need a clearer 'cookbook' approach to be specified for them, step by step.

'You're asking a lay person to do a risk assessment of something that's quite technical really, so it's got to be a flow diagram almost: you do this, you do this...'

School

'An Idiot's Guide to Fire Risk Assessment – something that was very clear, very short, and not with all the jargon.'

SME

Among larger businesses that used outside help, all but one would carry on that way.

4.5.4 Perceived levels of risk in own premises

Interviewees were asked how high they assessed the fire risk in their own premises to be. A wide range emerged in their answers – even between some apparently similar businesses.

Accommodation providers were all aware of the special potential risk attached to sleeping persons, and all reported a range of precautions in the light of their own risk assessments, consultations with the FRA and others, and (in some cases) inspections. But some of them rated their own business as ‘low risk’; others as ‘high’ – and one as ‘high risk, managed down to low’.

It was noticeable that all the larger businesses rated their own premises as ‘low’ risk, either because of the inherent nature of the business, or because the actions they had taken brought the risk level down to that level.

The rating that businesses offered (and therefore, perhaps, some of the variation between interviews) clearly depended in part on the nature of the buildings themselves. One hotel, for example, described itself as ‘high’ risk because of special building considerations.

‘I probably consider us to be a high risk, because of the age of the building and the structure, so we always are on red alert from a fire safety point of view.’

SME – hotel

4.6 Costs and management consequences

Smaller enterprises tended to find the FSO had placed a new burden on them, either in cost or time. By no means all of them, however, resented that burden, either because it was justified, or because it was an initial rather than ongoing problem.

Larger businesses, which had already been responsible under the Workplace Regulations, tended to report the FSO had not introduced new work or costs.

For some smaller businesses, the key duty that FSO placed upon them was gauged in terms of the spending required for compliance, rather than administrative time consumed. Some were concerned about the costs required to comply (for installing fire doors, for example), and wanted to know whether there would be any financial assistance or grants available to help with these.

Smaller businesses tended to report that the FSO had increased the burden on the business, and this led to resentment among some of them. For example, it required staff to take time away from core duties to carry out visual checks, which affected day-to-day running and efficiency.

'I think it is more onerous on us to manage because we have to go and do the risk assessment, and keep up the strategies for management. And it's also difficult to know if you have got it right or wrong – because beforehand, you got the fire guy who came round and gave you the certificate and said yes you're doing everything fine and you knew you were safe providing you followed what had been agreed. It's harder now to know if you have covered all the risks.'

SME

But for some, any increase in burden or cost was seen as an initial, one-off quantity rather than a permanent increase.

'I think it's increased the cost, but then it's only your initial cost ... It's fine as long as you've got the procedures in place. It's been no problem.'

SME

Indeed, even if the respondent felt the FSO imposed a new burden, that was not necessarily viewed with hostility.

'[It has incurred costs] but I think you can't run a business and not be aware of the care that's required for people that come into that business. So in a way yes, it's costing money but the house is safe as a result – so I don't see that as a burden, it's a necessity.'

SME

The level of perceived burden depended on the nature of the building as well as the business – for example, it was gauged to be higher in multi-site organisations whose premises differed widely from each other.

'[We] have got a Grade One listed [property, where] you can only do what the building dictates, then we have [another] which is purpose built, so it ticks all the boxes fairly easily. So it's quite a challenging area for us, plus as I say the volume of paper far exceeds anything I have had to deal with before.'

SME

Among the largest enterprises, some felt the amount of work they now undertook was just the same as before, because fire risk assessment was a long-standing practice (under Workplace Regulations). Some others had found the administrative work was now more difficult.

'I don't think it is easier to comply with, because beforehand it was almost like a checklist "Have you got this?" "Yes" "Have you got this?" "No". "If you haven't got it, what are you going to do about it?" That was a very structured and streamlined way of knowing what to do. Now it's more subjective, because you're looking at a risk rather than "Have you got this, have you got that." So I do think it's actually harder in some ways. [It's easier] only in as much as you don't have the pressure the day before the fire safety people are coming to assess you – which was always a bit of a panic that we had covered everything.'

Larger enterprise

Some recognised there had been changes (and associated costs) occasioned by the FSO, but felt this was obviously beneficial and necessary.

'Yes [it has added to time or costs], but I think it was needed in some cases. We now carry out two fire drills a year, which are planned, and this is full store evacuations where previously we would have done fire training without the actual live drill.'

National retailer

I think we are doing more now, but then that's our decision. We took a stance of "This is where we want to be." As far as we're concerned as a business, fire is our major risk. If we are going to kill people it's going to be in a fire and so we will take it very seriously.'

National retailer

One of the large businesses felt the burden had become somewhat greater because of the FSO, and that this would be ongoing rather than just a one-off added cost. This arose because the new legislation required all property decisions to be taken in a more considered way.

'It probably has cost us a bit of money, not huge amounts ... If we compare the two sets of legislation: when you had a Fire Certificate you knew exactly what was required. And as the business changes, the Fire Certificate is not that flexible, so it took forever to change on the Fire Certificate. Whereas now, you can make a decision that is more flexible and allows you to do something that previously would have been a bureaucratic requirement to change. But the downside is that when there is something you need to make a decision on, you have to spend longer on it.'

Larger enterprise

Some organisations (including some of the smallest and largest) felt that the FSO had meant little change in their business/management practices.

'It's the same issues in a different format isn't it? You know, as far as I'm concerned the regulations are more or less the same. We need the same level of protection in relation to the building, we need the same number of fire extinguishers, the same type, in the same places. Nothing has actually changed in what we need.'

SME

'Not many of the practices have changed. It's more to do with how often we assess it and check – that has changed, the recording of the assessment has changed.'

Larger organisation

'I don't think there's been any change to what we were doing before. I can't think that it's made any dramatic changes except that we had to do our own risk assessment. But apart from that, all the procedures that were in place are still in place so nothing's changed as far as that was concerned.'

Larger organisation

However, most had instituted at least some procedural or structural changes since the FSO's introduction. These included attending courses, setting up staff training courses, new patterns of regular visual inspections and record-keeping.

One large company, which believed it already had 'robust' risk assessment measures in place before the FSO, felt the main change was in the added responsibility to train to fight fires – which was resented. The pressure, however, to put this training in place was coming from their ISO 1801 assessor, rather than the FRA or the FSO itself.

'We had already got very robust risk-assessment. The only difference really is in relation to fighting fire, where the implication is that we're supposed to train members of staff to fight fires. It's no longer just about protection of people, it's also about protection of property. As a result of that we will have to introduce – and we haven't done it yet – fire-fighting training. I don't think that's fair and I don't think it's right. Fire Officers used to say "We want professionals, not amateurs, to fight fires."'

Larger enterprise

Another large organisation saw the FSO as adding some new topics to their pre-existing risk assessment.

'The fire risk assessment had to be altered. We expanded on that to include these additional areas, such as shared areas, and be mindful of people with disabilities, and also the safety of firefighters themselves. So we looked at our original risk assessment. We've learnt quite a lot over recent years anyway in areas that we hadn't covered previously that we needed to include so it's been subject to ongoing change anyway.'

National retailer

An entertainments group had adopted the risk assessment 'template' from its trade association, and passed that on to venue managers. It also now used an outside company to carry out spot checks on venues and on their risk assessments (which were compiled by branch managers).

4.7 Sources of advice and guidance

All the organisations interviewed had sought and used information, help, and guidance in responding to the FSO.

The larger and managerially more sophisticated enterprises used a range of sources, both general and specific to their profession or business sector.

In smaller businesses the general recourse was directly to the local FRA website.

Few respondents, even in the largest organisations, or with the most acutely relevant qualifications and training, felt they would not value guidance in carrying out their responsibilities under the FSO, if they were to prepare their own risk assessment.

But the nature of the guidance that people would value depended very clearly on the position they started from – and the size of their organisation in particular.

In the largest organisations, where there were in-house specialists in fire and health and safety, respondents had drawn upon information and advice from a wide range of sources, including guidance from CLG, from their trade associations and professional bodies, and generalised advice and discussion that they sourced in health and safety and other journals. Other (non-specialists) in the same large organisations, but operating at more junior or local management levels, had seen such guidance 'filtered' through their Head Office, in the shape of company-wide templates and manuals. Some, who already had experience of risk assessment in other contexts, had sought training specific to fire safety: in one case, a one day course, which was regarded as well worthwhile, though it 'could have been longer'.

Those in smaller organisations, with less specialised experience, tended to have expected and asked for guidance from their local authority or (more typically) their local FRA. The initial contact might have been by telephone, or even in person, but a common follow-through was to the FRA's website, where the Authorities have provided a suite of advice and further pointers, to help businesses handle the FSO.

As in many other areas, the internet has become an important resource, and many respondents (especially in smaller businesses) said this was where they had turned (or would turn) first for help in carrying out their duties under the FSO.

That said, one or two insisted that, despite their internet access, a 'simple booklet' would be preferable.

For most respondents seeking help and guidance, the local FRA appeared the most obvious and accessible source. Indeed, some felt it would be nonsensical if their FRA did not offer this help and as shown in section 3.8, many FRAs believe they are (or have been) offering such help – both 'passively' on their websites, and 'actively', in seminars, road shows, and responding to enquiries.

Some businesses reported that, when approached, some FRAs clearly do offer advice, although sometimes saying they're not supposed to. That advice might be to do with the risk assessment process itself, or how to implement its conclusions, or even what to do in the light of an inspection by the FRA as enforcer.

[The Fire Officer who visited] said "I wasn't supposed to give you advice directly" – which I was surprised about. I don't know why that is. You'd like to think, wouldn't you, that they're there to help you. Their job used to be to come round and do the fire assessment themselves, but now it's changed so you do it. But they're not allowed to tell you what you are or not supposed to have. It's a little bit confusing, but he did point us in the right direction and said "What one of these companies at least is proposing will suffice."

SME

Some respondents had found that FRAs had also prepared 'pro-formas' or guidelines for use in risk assessment, and some were reported to be happy to discuss it and provide further guidance over the telephone.

Besides the FRA, respondents cited or suggested various other real or potential sources of guidance, including:

- their local authority
- the HSE website
- a specific guidance pack produced jointly by the Scottish Government Police and Community Directorate, the Building Standards Agency and HSE (covering premises with sleeping accommodation).

4.8 Views on fire risk assessment guidance from HM Government¹¹

Larger business had used the CLG guidance documents though SMEs were less likely to be aware of this source of material.

Those who have seen and used the guidance (whether in large or small businesses) found it helpful and clear. If those who had seen the guidance expressed any reservations, they tended to be about how other people would find it, rather than themselves.

Some SMEs, however, want guidance that is simple, directive and tells them what to do step by step.

Most respondents felt they would value some guidance in carrying out their responsibilities under the FSO. But, the kind of guidance that would be helpful varied according to size of their organisation, and their level of familiarity with fire safety issues.

Few – particularly in the smaller and medium sized enterprises – were aware of the guidance documents that CLG had made available on fire safety risk assessment. When asked where they were likely to turn for help on fire safety issues, they often suggested that their local FRA would be their first port of call, followed by the internet. Other potential sources of information to which SMEs felt they might refer were the HSE and their local authority.

Only one SME respondent thought she had used CLG guidance documents, and another (in a larger business) thought his Head Office might have used the CLG documents as the source for the risk assessment 'how to' notes that the company had produced for its local site managers to use. One of the larger organisations (a national retailer) reported that it had devolved store-level risk assessments to local managers, and supplied them with its own tailored set of guidance, based on the CLG documents.

All of the larger businesses interviewed were aware of the suite of guidance from CLG on fire safety risk assessment. Some had used it, but in every case in the broader context of advice and information from trade associations and professional bodies, and generalised advice and discussion that they sourced in health and safety and other journals. It appears that some larger companies had provided more 'filtered' guidance to help managers at a local level to implement the provisions of the FSO. This took the form of 'house-style' corporate risk assessment templates and manuals. In some cases, specific fire safety training was made available to local managers too.

¹¹ Guidance can be found at www.communities.gov.uk/firesafety

Views on the guidance, among those exposed to it, were mixed. Among larger businesses, the guidance had clearly been more widely used and formed the basis of many of the risk assessment processes in place.

'I think the guidance that's been produced has been very, very well written and the language used is understood by most people. Obviously the size of the document would put a lot of people off but certainly I find that very good in terms of picking out certain areas for clarification myself.'

National retailer

'I find them very useful. I don't look at it every day. I just keep it as a resource if I need to go and find an answer to a question. It's there, you can go in and have a look and it's well laid out. You've got the diagrams, the pictures, they all help. So yes, I would say it's a useful document.'

National retailer

'I think the Government guidance which is specific to cinemas and theatres is excellent. Before, it was all very standardised across all businesses and certainly the details that they've done on this guidance are actually very useful.'

Large enterprise

There were concerns however that the guidance was lengthy and would be daunting to a lay person. On the other hand, that view was not expressed as a personal observation, rather that they thought others would be daunted by the guidance (as in the quotes below). In other words, people in *larger* businesses were concerned that their equivalent in *small* organisations would have problems.

'Overall I think the guidance is good. It's just that there are occasional bits of it that can be a little unhelpful ... It gives us difficulties: there are contradictions in the guidance – you're told to make up your own mind, but then they're saying "You need to do that."'

Large enterprise

'I wouldn't feel comfortable issuing that document to our store managers. First of all, you can't guarantee that they would understand it – because there's different levels of understanding out in the field; and just the sheer bulk of that document would put most people off.'

National retailer

Among SMEs, one respondent definitely had a CLG booklet to hand, and rated it highly, in terms of its usefulness to her.

'It was the Tourist Board that recommended that. ... It's "Department for Local Government Publications." ... I think it's very good and it's easy to read. The print is good, the diagrams are good and it's A4 size. Probably one of these coiled [bindings] would be better, but that's probably more expensive and cost is a factor. But it is easy to use ... as a reference, it's a good reference book.'

SME

Another SME respondent remembered visiting a 'Government' website (whose precise origin was unclear) to explore what was required of her small retail business but did not find the experience helpful:

'All I could glean from the website was that you should have a fire risk assessment done, but where you go from there I don't know. There's a form on there where you answer a load of questions but they didn't seem very relevant ... I did lose patience with it, and think "This is ridiculous." I'm one shop on the ground floor, one staff only ever at one time and generally only three or four customers at the most in at one time. I can't honestly see how there is any risk in my shop whatsoever. There's nothing dangerous in there ... it just seems another piece of wasted bureaucracy.'

SME

Some businesses and fire safety consultants interviewed questioned the status of the guidance. Their concern was that some fire safety officers in FRAs were interpreting the guidance as prescription, rather than recognising its purpose of advising and making recommendations to those with responsibility for fire safety.

'Some inspectors stick very much to the exact word of the guide and if a solution isn't contained in the guide then they will not approve it.'

Fire safety organisation

'Instead of looking at the guide as a guide, the Fire Service is saying every issue is a minimum requirement. The other thing is that, because of the sleeping risks, they're classing all bed and breakfast places and hotels as high- to very high-risk but ... actively encouraging these people to do their own fire risk assessments. ... I said "It says quite clearly in the front that it's just a guide. You can deviate from the guide providing a competent person comes up with a fire risk assessment and says it's appropriate. Everything in this book is just guidance" ... and they turned round and said "Yeah, but we're treating everything as minimum requirement."'

Consultant

In defining the guidance they would find ideal, some SMEs felt it would be helpful to have very specific, step by step guides or 'worked examples' available to them showing how to carry out the risk assessment.

'You're asking a lay person to do a risk assessment of something that's quite technical really, so it's got to be a flow diagram almost: you do this, you do this...'

School

'An Idiot's Guide to Fire Risk Assessment – something that was very clear, very short, and not with all the jargon.'

SME

However, although they tended to be interested in 'worked examples' or 'models' showing them how to carry out a risk assessment, SMEs also recognised that variations in levels of risk based on the premises and business processes might make this difficult to produce. Their preference was therefore to get 'bespoke' guidance for their premises, preferably from their local FRA.

'It depends on your premises really. You'd need someone to come and see your premises and tell you what would be the most suitable thing to do surely.'

SME

Some SME respondents had undergone some level of training in risk assessment to help them deliver their responsibilities under the FSO, and found exposure to the principles behind it helpful.

'I am comfortable with the non-prescriptive approach as I had the one-day training course, and I feel I have done a competent, thorough fire risk assessment including a better staff training package.'

SME

4.9 Use of third party consultants

Businesses that have used third parties to help them with FSO-related work tended to be happy with the quality and value they had received. Others, who had used them, were aware of variations and even conflicts between what they recommended (and became wary as a result).

Some businesses, and some in the fire safety industry, would welcome a scheme that regulates the quality of work done by such consultants. Some businesses appear to believe that such a qualification scheme probably exists already.

Larger companies tended to have a budget available to pay for support in delivering compliance with the FSO which meant that they could often consider bringing in outside help. Smaller businesses tended not to have such resources available leading to the responsible person being bound to adopt a 'do it yourself' approach.

Among the largest companies it seemed that there was often enough knowledge available within the staff – within our interviewee in many cases – to obviate the need to put the work out.

So, when which businesses used outside help to support compliance is considered, these interviews suggest that use of third parties tended not to be as common at either end of the size spectrum as it was in companies in the middle. Among those 'middle' companies the confidence and specialist knowledge were often not great, but the spending on help was possible. Most of the larger companies interviewed did not need the help; most of the smaller could not afford it.

Among the 21 SMEs in this study who had carried out a risk assessment, five had chosen to employ an outside agency to carry out the work. In every case their prime motive was that they felt they lacked necessary expertise (although time was also noted as a factor).

'I [didn't do it myself] because I don't believe that I should – because I'm not a fire person, I'm not a fireman. So I actually have the risk assessment done by a trained fire person, by a company that specialises in fire risk assessment ... I don't know what I'm looking for.'

SME

'As you know there are all sorts of books you can purchase out there for doing your fire risk assessment. But for something so significant ... from a personal point of view I would always choose to go externally rather than complete the assessment myself. And then at least I am sure that, if I use a reputable company, I have met the requirements of the new system.'

SME

'The person we use for fire risk assessment [is] the same company we use for our fire training, and to fix our emergency lights and our contractors for chasing up on all the bits and pieces.'

SME

One organisation had received its risk assessment from its funding body (a local healthcare trust) which employed its own fire officer, although they had been asked to sign a document confirming themselves as the responsible person.

None of the SMEs could recall whether the consultants they had used were qualified or accredited fire safety specialists, but most were 'sure' they would have been. All but one who used a fire safety consultant for risk assessment felt they received good value. On the other hand, those who had considered but rejected outside help tended to refer to cost as an important factor in that decision.

Among the 15 larger organisations interviewed, four had brought in an outside agency to prepare their risk assessments. Their decision to do so was driven by the range and number of premises in their estate, and their ongoing relationship with the consultant, rather than a perception that they lacked expertise.

Of these larger organisations, one felt that, having used a consultant to prepare their initial risk assessments, they would bring the task of reviewing and maintaining them in-house.

In larger enterprises, some respondents were already familiar with the risk assessment process, typically derived from their health and safety responsibilities. Even if they were not themselves experienced, some said they could draw upon help from colleagues who had health and safety experience. But despite extensive experience of risk assessments in the health and safety context, some in large enterprises said they would delegate or had delegated fire risk assessment to outside specialists. They chose to do this because they felt they lacked specialist knowledge of fire risks.

Several organisations (both SMEs and larger) had direct experience of using more than one supplier for risk assessments, and were in a position to compare their work. They reported wide variations in the outputs, even when comparing the work of different personnel from the same organisation.

'I have noticed when you go externally what you do get is a huge variety of the level of assessment. Fundamentally, they all achieve the same thing. But I would have said sometimes there is a bit of a mismatch between what one would deem as acceptable. For example, we've quite a wide geographical spread, [in four cities], and I have noticed discrepancies between the assessments. ... I am not saying they weren't all thorough enough. ... I think they [all] give very good advice ... But sometimes some people are much more pedantic than others ... but whether that is a good or a bad thing I don't know ... Obviously I would never ignore any of the recommendations made, but I do get the impression some are more thorough than others. ... Everybody does something slightly different, but something like fire risk assessments should be uniform across the board, I would have thought.'

SME

Several responsible persons, and some of those interviewed from fire safety industry, registered a concern over that wide variation in the quality and competence of those offering fire risk assessment services.

'To be a fire protection company in the UK all you need is a credit card and a white van – no qualifications are needed.'

Association

One SME interviewee reported that he had commissioned three separate fire risk assessments from consultants in the previous three months, each of which offered different advice. He went on to say that the risk assessment reports from the first two agencies had been 'torn to shreds' by his local fire safety officer when he was asked for an opinion.

'It depends on the assessor you have round what views he puts on the premises. I've had three different views. It's an absolute nonsense, this thing, because it depends on independent risk assessors who may be qualified, who may not be qualified, but all have a different point of view.'

SME accommodation

As well as concerns over the competence of some independent consultants, there were also concerns around the commercial motives and activities of some of these companies.

'They begin with the necessary legislation, and because they work for independent firms who really want to get some new business to implement the fire risk assessment, they bring up things that really don't have to be done.'

SME

One SME respondent reported that the consultant employed to carry out their risk assessment was subsequently using it as a sales aid and promoting it as a 'model' to other businesses in the areas.

Fire safety consultants themselves felt that their expertise genuinely served to identify and reduce their fire risk. Some felt, however, that responsible persons often did not recognise the limits of their own competence to carry out a thorough risk assessment, and hence were reluctant to pay for the added value and expertise they could bring.

'I think more specific guidance needs to be given to people to understand when they're at the limits of their competency or the limits of their ability; and when they do actually need external help to do it. And I understand that the original thrust was that people who were in their organisations should be able to do a fire risk assessment; but I think that increasingly they can't be expected to. So I think clearer guidance should be given on "Know your limits."'

Consultant

How businesses selected companies to help them seemed primarily to be a matter of chance, though some indicated that they applied some quality criteria and management to ensure the contract delivered its requirements.

'We can specify qualifications, the training, the training schemes, and we readily monitor progress. We have a dedicated risk assessment template. We are involved in the training of the assessors. We have monthly meetings with the supplier.'

Large organisation

Only one organisation (an NHS Trust) indicated it regularly used suppliers listed on the Institution of Fire Engineers' (IFE) database of independent and qualified fire safety specialists.

'In the case of a fire risk assessment I always use a third party who does not provide any fire alarm or fire equipment. If you go to fire extinguisher companies to do a fire risk assessment, they will probably say you need more fire extinguishers ... Each hospital has a nominated fire officer but we do fire risk assessments via external companies from the IFE register. If we're not going to go to full accredited, you might as well do it yourself. The point is, if it's not fully accredited, what legal standing has it got in court? Due diligence.'

Large organisation

Other businesses interviewed were unaware of any accreditation schemes, and several of them suggested that there should be a scheme or quality assurance process in place for businesses offering fire risk assessment services.

Those calls for accreditation, licensing or quality approval were echoed by some in the fire safety industry. Some proposed that if a 'fire safety specialist' was involved, then their certification should be compulsory.

'There is a need for one national accreditation scheme.'

Consultant

'Well I certainly think we must have a register of those permitted to make risk assessments.'

Association

'When we had the Ronan Point disaster in the UK all those years ago, and the flat blew out and the whole side of the building collapsed, we had [the CORGI register] put in ... There's no requirement like that for fire. So if you have your fire system put in, you can put it in yourself if you want, or you can go and get the guy in the white van, or you can go and get someone who can prove their competence. We'd rather there was legislation that said you have to use someone that is third party certificated, and can prove their competence.'

Association

On the other hand, some fire safety consultants felt it would be a potential regulatory burden to require consultants to demonstrate their competence through an accreditation scheme, particularly because they considered experience rather than certificates to be the key factor in determining performance.

'I could go on a course for a week and get a certificate but despite the fact that I've got three and a half years' experience...they say "No, but you can't prove it."'

Consultant

'They go on this course ... and they're being talked to about the FSO and then he tells them, "Now you know about the FSO, you can go out there and use that to go and win work." We have one guy in here, a general builder, he said we did this talk, and he went out round [the city] and he went to all the nursing homes and started telling them about the FSO and they had to do this, that and the other. That was all he had, was 20 minutes training. He scared them all and signed up a load of work on the back of that.'

Consultant

4.10 Relationships with enforcers

Those businesses that had received an inspection or audit visit from their FRA tended to respond positively to the experience. FRAs had made helpful and reasonable suggestions, rather than being high-handed. Businesses had found the FRAs open to discussion, ready enough to provide advice.

Some people whose experience spanned several FRA areas suggested that the approach taken by FRAs was not always consistent across the country.

The sample of businesses was deliberately selected to include some who had been audited (inspected) by their FRA under the FSO, and others who had not. So the relationships between businesses and their enforcers (the FRAs) since the FSO was implemented, were either from seeking help for compliance, or from site inspections (audits) by the FRA, and their follow-up.

Of the 21 SMEs interviewed, three had received a formal audit visit from their local FRA since October 2006. All three were accommodation providers. Several other SMEs, however, had also contacted their local FRA for fire safety information or guidance since the FSO had been introduced, either by visiting its website or making telephone enquiries. One interviewee reported that he had contacted a senior FRA officer for a 'second opinion' in connection with the fire risk assessments that consultants had prepared for him.

The experience of an audit visit from the FRA was more widespread and frequent among larger enterprises than among SMEs. Several of them (operating from multiple sites) had received several visits. Few reported any difficulty arising from individual visits, either in the performance of the FRA or in the actions that resulted.

'At Head Office, the Fire Prevention Officer inspected the premises, gave us a little bit of advice about a couple of things, looked at the risk assessment and went away happy. We've also had them at some of our operations sites, and in the most recent one he got us bang to rights. There were a couple of issues noted, which are now being addressed, but it was not aggressive. The inspections don't really vary from how they were before.'

Larger enterprise

'Generally we do get people in occasionally. We don't usually get any major issues, little bits and bobs but not anything worrying, we've not had a great problem so far. If they turn up and spot something, then that's all the better for us.'

Larger enterprise

One large enterprise mentioned the willingness of its local FRA to consider non-standard, 'engineered solutions' to particular areas of concern:

'Say we've got a travel distance which is five or 10 metres more than the standard, then ... [The FRA] will discuss it with us, and we will pursue a compromise between ourselves. But usually it works out OK.'

National retailer

Some respondents said that when they received a report from the FRA after an inspection, they found it hard to distinguish between recommendations or suggestions on the one hand, and instructions on the other. It was not always clear whether what they were being told was 'good advice' or a mandatory order.

'I think all of those [recommendations in the audit report] were probably suggestions, as opposed to "You have to do it or else." But probably the lighting, we were asked to do it; so that's probably one that was more of an 'order'. But it wasn't put in an order format.'

SME

For a newcomer to the bed and breakfast business, the fire officer seemed to be exercising discretion and providing advice because the legislation was still new.

‘As I understand it, this law came into act a good couple of years now, and [the Fire Service] were being lenient, certainly the local ones here. I don’t know if that’s true across the country but they were pretty much saying well we’re not going to enforce it for the first 18 months to give people a chance to sort of get used to it and then we’re going to start enforcing it.’

SME

4.10.1 Consistency of approach between enforcers

Several large organisations with premises across the country raised a concern around the extent of consistency between different FRAs and between different fire safety officers within the same FRA. These concerns – which related both to the helpfulness of approach and to the adequacy of measures in place – were echoed by several in the fire safety industry whose clients were in different FRA regions.

‘It varies from brigade to brigade, and between individuals. Some of them are very pleasant; others just come in and say, ‘Get things sorted’. Some try to help and some are just dogmatic.’

National retailer

‘We have different Fire Officers and there’s a really wide variance in the views of one and another. One will have fairly strong views on something, which I would consider may be quite trivial or, to be honest, possibly quite irrelevant and stupid – and picky, really. Another one may be much more upfront and helpful. I don’t know whether it might be possible to make sure they’re all singing off the same hymn sheet.’

Larger enterprise

‘The advice or the enforcement that’s been given in one county is very different to the advice and the enforcements being given in another county for very similar buildings in similar circumstance so there’s a lack of consistency.’

Consultant

A fire safety consultant also suggested that an FRA could change its view of what was acceptable before and after the FSO, using the legislation as the occasion to change (and raise) the standards of protection expected in a business.

'There are examples of premises that have been certificated under the previous regime – signed off as being fine by the Fire Authority. They're given the thumbs up by the Fire Authority and all of a sudden the Fire Authority are now going there and saying, "Well the law's changed now," and using that as an excuse to raise standards, – well not an excuse but use that as an opportunity to raise standards within those premises. And it's come as bit of a shock to a 'responsible person', when, "Well my building's been like this for years and you were happy with it in the 90s."'

Consultant

4.11 Defining the 'responsible person'

Several respondents from the largest enterprises felt an important question mark hung over the definition of the 'responsible person'.

'I think the regulations themselves are fairly clear. There is one little bit in them that has given some pause for thought ... and that's around who is the 'responsible person'. Obviously we operate out of different offices. I'm quite happy to be responsible for the policy, setting the standards that we need. If it goes wrong they can come back to me. But also it still sits on the Board, and for smaller offices it's the Regional Manager who gets the responsibility. And that's not clear because it says a business can be responsible, but then sort of requires people to designate specific tasks.'

Larger enterprise

That view was echoed by a retailer whose store managers had been made 'responsible persons', and carried out risk assessments for their branches – but sometimes FRAs had contested that view, based on their perception that someone with more competence is available elsewhere in the organisation.

'Often the Fire Brigade themselves don't see these people as the responsible people. They say, "This is information you've been given by someone at Head Office, whom we would consider the responsible person."'

National retailer

It was therefore interesting to note that a different retailer had simply taken the view that the 'responsible person' was the company, rather than any individual.

‘Our Health and Safety Department basically took the decision, looking at the Fire Safety Order, that there wouldn’t be an individual within [the company] who would be the responsible person, and we consider the responsible person to be the company itself ... There isn’t an individual in the company you could say is totally responsible for all fire safety. It is spread between safety departments, store managers, facilities management, shop fitters, maintenance people – there is a whole range of people, and we couldn’t, we felt, pinpoint one individual who would be the responsible person on this regulation.’

National retailer

4.12 Areas for further support or improvement

In the interviews with businesses and the fire safety industry, several areas arose (typically in only a few interviews each) that could benefit from further communication or action.

- Greater awareness raising of the requirements on the FSO among SMEs
- Tailored advice on risk assessment to be made available to ‘responsible persons’
- Greater clarity around identifying the ‘responsible person’ for a premises, particularly in multi-site organisations
- Greater clarity about who may have an appropriate level of competency to assist with delivering compliance under the FSO, and advice on how to access it
- FRAs continuing to take a supportive and educational approach to compliance under the FSO.

Chapter 5

Conclusion

Overall, the conclusions from this research have been positive. They show that the FSO is settling down well with those who have roles and responsibilities under it after 18 months – 2 years of being in force. It has created a single regime, which is better understood by both businesses and the enforcers.

The research has shown that enforcers have generally been able to accommodate the changing demands of their work and that the FSO fits in well with the risk based approach they are required to take through the IRMP process.

For 'responsible persons' it is more difficult to speak in general terms. This is because there the FSO covers such a wide range of organisations of different sizes and premises function. However, 'responsible persons' have generally had a positive experience of the FSO – some have seen little change from the previous regime, others have experienced much greater change with new responsibilities being placed on them.

Even though the main findings of the research reflect that this is a new piece of legislation which is bedding in well, it is recognised that there are areas where further action or communication could benefit both enforcers and responsible persons:

- **Greater awareness raising of the FSO requirements**
Both enforcers and responsible persons felt that awareness was not universal and smaller businesses were generally less familiar with the requirements of the legislation.
- **Tailored advice on risk assessment to be made available to responsible persons**
Larger organisations had tended to use the HM Government series of guidance, where the guidance had been used it was found to be helpful and clear. However uptake amongst smaller business was lower. Some small businesses would welcome more step by step guidance and some FRAs would prefer a more prescriptive approach to be given to these small businesses.
- **Greater clarity around identifying the 'responsible person' for a premises, particularly in multi-site organisations**
Enforcers sometimes have difficulty recognising exactly who the 'responsible person' is, typically in large multi-site organisations.

- **Greater clarity about who may have an appropriate level of competency to assist with delivering compliance under the FSO, and advice on how to access it**

Enforcers recognised that 'responsible persons' may wish to use someone with greater fire safety expertise than themselves to carry out a risk assessment. They would welcome an agreed accreditation system. Some businesses and some in the fire safety industry itself would also welcome such a scheme. Generally where 'responsible persons' had used a third party, they tended to be happy with the quality and value of the risk assessment.

- **FRA's continuing to take a supportive and educational approach to compliance under the FSO**

Enforcers recognised that there has been a cultural shift to a risk based regime. They tend to have sought a balance between providing advice and enforcement action. As the FSO is becoming more established, some have deliberately chosen to reduce the amount of advice they give but most continue to offer advice if a 'responsible person' shows that they want to comply. Businesses which had received an audit visit from their FRA tended to view it positively. They reported that FRAs had made helpful and reasonable suggestions in a supportive way. Some multi-site areas suggested that the approach taken by different FRAs was not always consistent.

The research has shown that it is too early to say how the FSO has affected fire safety and the maintenance of fire safety equipment. Assessing if the FSO has reduced the number of avoidable fires and consequently death, injury and loss of property will need to be looked at in the longer term when more quantitative data is available.

Appendix A

Glossary

The following abbreviations and nomenclature occur in this report, referring to the subjects covered:

CFRMIS	Community Fire Risk Management Information System – a versatile database method to identify levels of risk for premises, developed by the same software house as FSEC.
CLG	The Department for Communities and Local Government – with responsibility for fire safety.
CSCI	Commission for Social Care Inspection – a body that audits healthcare and other premises.
FPO	Fire Protection Officer – FPOs are members of Fire and Rescue Services who audit premises' fire risk assessments and associated actions, and have powers of enforcement.
FRA	See FRS.
FRS	Fire & Rescue Service – the generic term used here for the various civic and regional authorities that provide fire service and protection. These are also variously known as Fire and Rescue <i>Authorities</i> (FRAs) or <i>Brigades</i> .
FSEC	Fire Safety Emergency Cover – proprietary software developed for CLG and used by all FRSs across the United Kingdom. A modelling tool that allows the investigation of different resource allocation strategies.
The FSO	The 'Fire Safety Order' – technically, the <i>Regulatory Reform (Fire Safety) Order 2005</i> , which was enacted in 2005 and came into effect in October 2006.
H&S, or HS&E	Health & Safety or Health, Safety & Environment – management disciplines or functional units within enterprises.
HMO	House of Multiple Occupancy – property let to multiple tenants which comprises shared facilities – full definition available on CLG website.
HTM86	'Firecode' – fire risk assessment procedures for hospitals.
IFE	The Institution of Fire Engineers – a non profit making professional body which upholds professional standards within all public and private fire sectors, aiming to encourage and improve the science and practice of fire extinction, fire prevention and fire engineering.

IRMP	Integrated Risk Management Plan – a management tool or system by which a Fire & Rescue Service allocates priority to different types of work according to its measurement of the risk associated.
NEBOSH	The National Examination Board in Occupational Safety and Health – a body awarding professional qualifications.
SME	Small or Medium-sized Enterprise – organisations employing fewer than 250 people.
Workplace Regulations	(In the present context) the Fire Precautions (Workplace) Regulations 1997 – legislation which introduced the concept of risk assessment in all workplaces.

Appendix B

Research objectives

The overall aim of this study was to provide a first snapshot of how the FSO is bedding in, and this initial review will form part of a later more comprehensive evaluation of effectiveness. The stated objectives of the research were to:

- establish whether the original aims and objectives of the FSO are being met following implementation of the FSO
- whether the FSO is helping to reduce avoidable fires and consequently death, injury and loss of property); and
- provide a basis for a future, longer-term evaluation of the FSO.

Those objectives were exploratory in nature, and required an investigation in depth of the awareness and actions that have arisen because of the FSO. The need to gain full insights into the level of understanding and perception among those affected, and of the types of responses that they have made, both pointed toward a *qualitative* research approach for this interim review. Nevertheless, in exposing insights in depth, it is expected that the findings from this study can be used later to inform a definitive quantitative evaluation.

The study set out to explore a wide range of subjects, each having differing relevance within each of the three 'target' categories defined above. The data collection method needed to be flexible enough to address these specific topics within each sector:

Enforcers

- changes in resource allocation
- changes in inspection regime
- balance between being advisers and enforcers
- work done to promote the FSO with responsible persons
- how their enforcement/inspection responsibilities are informing Integrated Risk Management Planning (IRMP) and vice versa
- views on CLG/IRMP enforcement monitoring requirements
- views on areas of weakness that may benefit from further CLG policy input in the short term.

Business respondents

- general awareness of compliance requirement
- impact on staff time and resources
- impact on UK PLC
- variations by industry
- experience of responsible persons in carrying out risk assessment
- perceptions and awareness of guidance
- ease of finding assistance (eg competent people etc) and the quality of the assistance.

Fire safety industry

- perceived awareness of the FSO
- impact of the FSO on their business
- confidence in quality of advice given as a 'competent person'.

Appendix C

Research method

The research provides a robust snapshot of how the FSO is bedding in after 18 months–2 years of coming into force. It is a qualitative piece of work including in depth interviews with key stakeholders. An essential piece of this work was to provide a basis for a longer-term evaluation of the FSO.

Individual depth interviews were carried out with enforcers, ‘responsible persons’ and some business associations, and fire safety industry representatives. These interviews were arranged by telephone, and either took place at the respondent’s place of work or by telephone. The research involved two sets of interviews; the first scoping interviews that were undertaken with various sector representative bodies. This helped shape the research and topic guides for the main stage of the project which represented the bulk of the field work and involved interviewing enforcers (including FRAs), industry representatives and responsible persons.

With some exceptions, those interviewed for this study were promised anonymity and their observations have not been attributed to them as named organisations. CLG does know which organisations were spoken to.

In order to ensure the interviews covered appropriate subject matter in a systematic way, Topic Guides were prepared. These are shown in Appendix E.

Appendix D

Research sample

Nine organisations were included in the scoping element of the research:

- Chief Fire Officers Association (CFOA)
- Health and Safety Executive (HSE)
- Crown Premises Inspection Group (CPIG)
- Confederation of British Industry (CBI)
- Federation of Small Businesses (FSB)
- All Party Parliamentary Group
- Fire Safety Development Group
- Institute of Fire Engineers (IFE)

A purposive sample of FRAs was drawn from a list of all FRAs. At the main stage of the project FDS conducted main depth interviews with 13 FRAs:

- Cornwall FRA
- County Durham & Darlington FRA
- Cumbria FRA
- Dorset FRA
- Essex FRA
- Hampshire FRA
- Hertfordshire FRA
- Humberside FRA
- Merseyside FRA
- Northumberland FRA
- Nottinghamshire FRA
- Royal Berkshire FRA
- West Midlands FRA

Also included as main stage interviews were:

- Other enforcers
 - three Local Authorities, and
 - the Ministry of Defence (who cover for example housing and not just military bases).
- Fire safety industry representatives
 - 4 interviews with consultants, and
 - 11 with various associations

Not all organisations interviewed have been named here due to confidentiality arrangements.

For the responsible person's element, the research aimed to be as inclusive as possible. The characteristics of those chosen to be interviewed included:

- Range of organisation size: micro/small, medium and large
- Organisations with multiple sites (at least 15 organisations with multiple sites)
- A mix of organisations who have always been covered by and compliant with Fire Safety Workplace Regulations (and are used to the necessary procedures) and those who were outside the scope of the old regulations, for whom the FSO is the first time they have had to comply; and who are new to the process
- People responsible for the communal areas within a building
- People responsible for premises that have been inspected by the enforcing authority
- Premises where the assessment has been done but they have not yet been inspected
- Premises where the assessment has not been done but they are aware of the FSO
- Premises where people sleep on site
- Premises that handle hazardous substances defined using the list detailed in the FSO

Achieved 'responsible person' sample

Forty-five main stage interviews were carried out with 'responsible persons'. The characteristics of those interviewed were as shown in the table below. Classifying interviewees by organisation size was not always straightforward. In practice, several of those organisations we have classified as 'small' or 'medium' in the table below, were autonomous parts of larger bodies, and could also have been classified as such. For example, there was bound to be ambiguity over the status of a nursing home that was part of a national group, but which managed all its fire, health and safety responsibilities autonomously. Viewed as a nursing home, it was in the 'medium' category; but as part of a national group it was 'large'. In sorting respondents into the categories below, we have

preferred to judge their status based on employee numbers in the premises they were responsible for, rather than the ultimate size of the corporate entity that they might be part of.

Premises type	Number interviewed	Size of business				Number of sites	
		Micro	Small	Medium	Large	Single site	Multi site
Care Homes	6		3	2	1	4	2
Factories/ warehouses/ workshops	4		2	1	1	3	1
Further education/school	5	1	3	1		1	4
HMOs and hostels	4		2	1	1	2	2
Hospitals	3			1	2	2	1
Hotels and B&Bs	6	2	3	1		5	1
Licensed premises	3	1	1	1		3	
Offices	6		2	2	2	2	4
Public buildings	2	1			1	1	1
Shops	3	1			2	1	2
Shops with residential premises above	3		2		1	2	1

'Micro': 1-2 person 'family' business

'Small': employing 2-25 persons in the premises that respondent was responsible for

'Medium': employing 25-250 persons

'Large': employing >250 persons

Appendix E

Topic guides

RESEARCH INTO FIRE SAFETY ORDER 2005 TOPIC GUIDE – ENFORCERS

Let me introduce the work we're doing...

- Explain background to the study, reasons for research, and use of results:
 - *Now that the Fire Safety Order has been in place for 18 months, it is timely to evaluate how it is bedding in across England. We are conducting a snapshot evaluation on behalf of the Department for Communities and Local Government, talking to a number of FRAs.. We will also be talking to a sample of responsible persons and the fire safety industry.*
 - *Research will be used by CLG to establish whether the original aims and objectives of the FSO are being met, to understand the extent to which the FSO has affected fire safety in non-domestic premises and inform their future policy development in this area.*
- Permission to record, confidentiality – while their feedback will be included, their identity will not be revealed in the final report – but CLG will know which enforcers took part in the research
- Explain we are **not** here to vet or test the enforcers on behalf of CLG – we want to understand and reflect the real issues that are being encountered

Assume talking to head of technical (statutory) fire safety?

Organisational structure

The FSO represents a major change from the previous legislation for FRAs. We'd like to talk to you first about the impact that the FSO has had on your organisation – what difference did it make?

- Staffing
 - Has the FSO affected fire safety staffing levels (more or less?)*
 - Do you have dedicated technical fire safety staff or are they a share resource?*
- Financial resources
 - Are there any other resource implications you'd like to mention?*

- IRMP/risk management/changes in FRA's priorities/national indicator
How does your approach to fire safety inform the development of your FRAs IRMP and vice versa?
Are you confident that your systems enable you to target highest risk premises for inspection?
How do you identify, locally, what premises are likely to represent the highest risk?
- Training
The FSO requires a more audit based approach to inspection. What did/does this mean for your staff in terms of training and development?
Do you have sufficient expertise available?

What is your strategy for managing the new duties the FSO put on your FRA

- IRMP
How does it fit within your IRMP
- Inspection/audit plan – identification of buildings/impact on staffing|
Links with FSEC
- Balance of prevention/protection and response
How do you strike the appropriate balance?

The FSO has been in place now for over 18 months, have you made adjustments to your strategy over this time? Do you have any plans to do so?

CLG produced a suite of detailed technical guidance, primarily for the Responsible Person to assist them with their Risk Assessment, but also for enforcing authorities. Do you use the HM Government guidance?

- What impressions do they have of it?
- Any feedback?

The Fire and Rescue Services act gives FRAs a duty to provide advice to those who seek it; the Fire Safety Order gives you a duty to enforce fire safety. Do you think there are any issues/difficulties around these two duties?

- Culture change from 'friendly face to enforcer'
- Striking the right balance?

Responsible Persons

The FSO places a duty on Responsible Persons (RPs) to carry out a fire risk assessment. CLG carried out research which said that roughly 60% of responsible persons were aware of their responsibilities under the FSO. Is this about the same as your experience? Does it vary across sectors and size of business?

Where you come across a RP who is aware of their obligations under the FSO, do you find that:

- they use others to do the work for them?
- what are your views on the use of third parties to do risk assessments?
- are there any issues about competence of those third parties?
- do you find that there is a difference in approach taken by small, medium or large businesses?

If you come across a RP who is unaware of their obligations under the legislation, how do you deal with this?

- What is your approach?
- How do you educate RPs?
- How do you balance education and enforcement?

We'd like to explore the issues around compliance and know more about premises where an audit and a risk assessment have been carried out.

For those who are compliant

- Variation by sector/size
Key difficulties experienced by RP
- Suggestions of further improvement

For those not compliant

- Variations by sector/size
Key difficulties experienced by RP

SMEs seem to be struggling – are you mindful of this/ Are you developing approaches designed to support them?

- What do they do? Help, educate and inform
- Informal/formal enforcement processes
Resource implications
Role of the courts
Appeals procedure if RP doesn't agree with the outcome of an inspection – is it publicly available?
- Effectiveness of these
Does the prosecution process deliver improved fire safety

Relationship with enforcers at a local level

Under the FSO, there are a range of other enforcers dealing with different types of premises. There are also other pieces of legislation which link closely to the fire safety which have other enforcers. We would like to understand more about your relationship with these other enforcers?

- Which other enforcers do you work with and under which legislation?
Any issues about your relationships with them?
- Any issues relating to the Licensing Act; Housing Act etc?
Do you regularly liaise with these groups e.g. over perceptions of risk; sharing data; sharing good practice; review inspection outcomes/enforcement proposals
- Awareness of the better regulation agenda/local better regulation office – if so what are their experiences?

Way forward

The research we're carrying out aims to capture progress made to date across a range of issues. CLG would welcome feedback on how things can be improved over the next 2-3 years.

- Do you have mechanisms in place to disseminate good practice?
To RPs and across FRAs
- Are there any issues on which you would welcome support?
- Are there any issues you think CLG should look at in detail in its longer-term study of the impact and effectiveness of the FSO?

Data collection

- What data is currently being collected around the enforcer activity of the FSO?
- What does this data indicate so far?
- Does the data you collected have any input into your strategy for implementing the FSO?
- Does the data give any indication about the impact which the FSO has had on reducing avoidable fires/death/injury/loss of property?
- Are you aware of the work CFA are doing to improve audit and information gathering – any comments on this?
- Awareness of CLG's data collection – any comments?
- What could be done to tailor/improve your data collection?
- Would collection of any other data be helpful?
- Are you intending to collect more in future?
- If not currently collecting data – why is this? (resource issues?)
- If FRS is willing – we may like to recontact them about their data collection methods at a later date – would this be OK?

7485/DD

RESEARCH INTO FIRE SAFETY ORDER 2005 TOPIC GUIDE – RESPONSIBLE PERSONS – MEDIUM-LARGE BUSINESS

Introduction

- Introduce self/FDS
- Explain background to the study, reasons for research, and use of results:
 - *We are conducting a wide reaching evaluation of the impact and effectiveness of new fire safety legislation for the Department for Communities and Local Government, the Government department responsible for fire safety law.*
 - *We are interested in how businesses are managing the risk associated with fire and in finding out about how much you know about your responsibilities under the law. We are particularly interested in your views on the impact that the legislation has had to date, what issues it has presented you with and how you have managed the process of compliance.*
 - *Research will be used by CLG to establish whether the original aims and objectives of the FSO are being met, to understand how the FSO has affected businesses/ organisations who are implementing it and to inform future policy development on fire safety outside the home. They will also use the research to identify what further support may be needed in future to help responsible persons better fulfil their duties under the FSO.*
 - *We are also talking to the FRS and other enforcers of the legislation to understand the impact of the fire safety regime on them, and to the representatives from the fire safety industry.*
- Permission to record, confidentiality – while their feedback will be included, their identity will not be revealed in the final report
- Explain we are **not** here to vet or test them on behalf of CLG – we want to understand the issues that people are encountering and feed this back to CLG
- This is an informal discussion and there are no right/wrong answers
- Discussion will last approximately 45-60 minutes

Respondent role

- Brief exploration of the respondent's business or enterprises ; size of business (micro, SME, medium or large); no of employees; multi-site (ie, operating from more than one premises); within one FRA area or spread more widely; type of business/sector; charity? [USE THIS TO IDENTIFY WHICH DISCUSSION GUIDE TO USE]

- Do you hold hazardous substances, explosives on the premises; are you responsible for flats or houses in multiple occupation; sports grounds; construction sites?
- Identification of responsible person: is the 'responsible person' the employer (ie, an entity); the owner; the occupier or other (please specify). Who in practice has this role within your organisation? Should I be speaking to them?

The Fire Safety Order introduced in Oct 2006 a streamlined legislative approach to fire safety in all non-domestic premises. It is based on the principles of risk assessment and aims to place the responsibility for managing fire safety in any workplace or public premises on those responsible for creating the risks. The FSO seeks to ensure that the risk to life is minimised through the provision of adequate fire safety arrangements and the development of escape plans.

For some, businesses this represented a significant change from the previous fire safety regime which was predominantly based on the Fire Service issuing some businesses with a fire certificate, subject to satisfactory fire precautions being in place; and for larger businesses, from 1997, on the need to protect employees through a risk assessment.

We'd like to discuss with you your views on the new regime. We would hope to cover issues around:

- Your understanding/awareness of the legislation
- The risk assessment process
- Sources and quality of fire safety advice and guidance
- Your experience of inspection and enforcement role of the Fire Service and other enforcement organisations
- Role of representative bodies
- Issues for further consideration/policy development

Awareness of the legislation

- Are you aware of the legislative change?
- What effect has the transition from the old fire safety regime to the Fire Safety Order had on your business
- Is it easier to understand/comply with?
- Do you think the new regulation deliver clarity on fire safety? Does the FSO represent an effective regulatory framework? Do you think fire safety in your business has improved as a result?

- One of the original intentions of the Fire Safety Order was to save businesses money through the freedom and flexibility it allows, do you think this has happened? Does it increase or decrease the burden of compliance on your business; what is the practical effect – time? Cost? Is it affecting the profitability of your business? Have you changed your approach to fire safety as a result of the new legislation?
- Do you have automatic fire safety systems? Are they effective? Do you keep them regularly maintained?
- Is carrying out a fire risk assessment a condition of your insurance?
- Are high safety standards a selling point for your business?

One of the essential requirements under the FSO is for the RP to carry out a risk assessment; we'd like to find out more about your experience in this area.

- Has your business carried out a risk assessment?
- What is your approach to fire safety? How far have you developed bespoke solutions on the basis of your business premises? How does this vary across your business? (site to site FRA area to FRA area?)
- Do you have specialist fire safety expertise within your organisation? Do you buy it in? – Where from?
- Are you comfortable with the non-prescriptive approach to fire safety which allows you to decide what measures are most appropriate in the particular circumstances of your premises? – Do you use fire engineered solutions? Are FRAs sufficiently flexible to allow you to use such options? Does this vary across your sites? Do the FRAs have any concerns with these? Did you take account of the needs of all those likely to be on your premises in your risk assessment?
- How do you get advice or guidance on the fire risk assessment process?
- Do you use the CLG technical guidance documents? Why did you consult them? Do you have any comments/observations on this material?
- The Fire Safety Order sits within a wider legislative framework and we are interested in the links – and practical implications of these – to other pieces of legislation. Are your fire safety arrangements affected by other legislative requirements? Are you clear about how you satisfy all the requirements on you? Where do you go for clarification/advice?

Under the FSO, the Fire Service (and a number of other enforcers eg, HSE, Crown Premises Inspectors Group, Housing Officers, MoD) has a statutory duty to audit and, where necessary, enforce the requirements of the FSO. The Fire Service carries out this duty on the basis of its view of the relative risk of fire in individual premises. So, those premises identified as 'high risk' should receive more audit/inspection attention from the Fire Service. This part of the discussion aims to find out more about how the Fire Service (and where relevant, other enforcers) deliver their audit and enforcement responsibilities under the FSO.

- Would you consider your premises to be a low, medium or high fire risk?
- Do people sleep on your premises?
- Have you had a fire safety audit from the Fire and rescue Service? What was the outcome?
- Have you found the enforcer's approach varies according to type of building? How?
- The Fire Service has a range of enforcement measures available to it including agreeing action plans for improvements with responsible persons, issuing formal enforcement notices which require specific improvements, prohibiting the use of a premises, and or taking responsible persons to Court for significant breaches. In your view, was the outcome of the audit proportionate to the level of identified risk?
- Did you disagree with the outcome of the audit? Did you challenge it? How?
- Have you been prosecuted under the FSO? What impact has this had on your business/organisation?

The Fire Service also has a duty to educate and inform their communities about fire prevention measures and on how to secure an appropriate means of escape. This part of our discussion aims to capture your experience, if any, the local Fire Service.

- If a business is spread over several sites/FRA areas do you have a lead authority arrangement? If so, how does this work for you? Do they work with you to resolve issues? Is it effective? How do the different FRAs involved view the arrangement?
- If you don't have a lead authority arrangement, is this something you would consider? Do you find enforcement/compliance requirements vary substantially depending on which Authority is enforcing? Have you been able to overcome these variations?
- What are your perceptions of the Better Regulation Agenda and the Local Better Regulation Office?

CLG recognises that the FSO is still quite new and is genuinely interested in your views on what should or could be done to facilitate greater awareness of the requirements of the FSO and benefits of a risk based approach to fire safety.

- Are there any issues which need to be addressed or clarified urgently?
- Your thoughts on how we ensure the requirements of the FSO do not represent an unnecessary burden on business would also be appreciated.
- Do you feel that your business representative bodies are helping to improve awareness/understanding of the new legislation? How? What's your relationship with them?

7485/DD

RESEARCH INTO FIRE SAFETY FSO 2005 TOPIC GUIDE – RESPONSIBLE PERSONS – MICRO/SME BUSINESSES

Introduction

- Introduce self/FDS
- Explain background to the study, reasons for research, and use of results:
 - *We are conducting a wide reaching evaluation of the impact and effectiveness of new fire safety legislation for the Department for Communities and Local Government, the Government department responsible for fire safety law.*
 - *We are interested in how businesses are managing the risk associated with fire and in finding out about how much you know about your responsibilities under the law. We are particularly interested in your views on the impact that the legislation has had to date, what issues it has presented you with and how you have managed the process of compliance.*
 - *Research will be used by CLG to establish whether the original aims and objectives of the FSO are being met, to understand how the FSO has affected businesses/ organisations who are implementing it and to inform future policy development on fire safety outside the home. They will also use the research to identify what further support may be needed in future to help responsible persons better fulfil their duties under the FSO.*
 - *We are also talking to the FRS and other enforcers of the legislation to understand the impact of the fire safety regime on them, and to the representatives from the fire safety industry.*
- Permission to record, confidentiality – while their feedback will be included, their identity will not be revealed in the final report
- Explain we are **not** here to vet or test them on behalf of CLG – we want to understand the issues that people are encountering and feed this back to CLG
- This is an informal discussion and there are no right/wrong answers
- Discussion will last approximately 45-60 minutes

Respondent role

- Brief exploration of the respondent's business or enterprises ; size of business (micro, SME, medium or large); no of employees; multi-site (ie, operating from more than one premises); within one FRA area or spread more widely; type of business/sector; charity? [USE THIS TO IDENTIFY WHICH DISCUSSION GUIDE TO USE]

- Do you hold hazardous substances, explosives on the premises; are you responsible for flats or houses in multiple occupation; sports grounds; construction sites?
- Identification of responsible person: is the 'responsible person' the employer (ie, an entity); the owner; the occupier or other (please specify). Who in practice has this role within your organisation? Should I be speaking to them?

The Fire Safety Order introduced in Oct 2006 a streamlined legislative approach to fire safety in all non-domestic premises. It is based on the principles of risk assessment and aims to place the responsibility for managing fire safety in any workplace or public premises on those responsible for creating the risks. The FSO seeks to ensure that the risk to life is minimised through the provision of adequate fire safety arrangements and the development of escape plans.

For some, businesses this represented a significant change from the previous fire safety regime which was predominantly based on the Fire Service issuing some businesses with a fire certificate, subject to satisfactory fire precautions being in place; and for larger businesses, from 1997, on the need to protect employees through a risk assessment.

We'd like to discuss with you your views on the new regime. We would hope to cover issues around:

- Your understanding/awareness of the legislation
- The risk assessment process
- Sources and quality of fire safety advice and guidance
- Your experience of inspection and enforcement role of the Fire Service and other enforcement organisations
- Role of representative bodies
- Issues for further consideration/policy development

Understanding of the legislation

- Are you aware that fire certificates have been abolished?
- Did the previous legislation fire safety legislation (Fire Precautions Act 1971 or the Health & Safety (Workplace) Regulations 1997 apply to your business/enterprise? If yes, what do you think of the new legislation?
- How did you find out that the law had changed?
- Is the new legislation – the Regulatory Reform (Fire Safety) Order or the Fire Safety Order – easier to understand and comply with?
- Do you think the new risk based approach to fire safety has improved fire safety in your business/enterprise?

- Do you think it represents an effective regulatory framework?
- Do you consider the new arrangements to increase or decrease the burden of compliance on your business? What is the practical effect? Probe on time? Cost? Is it affecting the profitability of your business?
- Have you changed fire safety in your premises as a result of the new legislation? Why? How?
- Would you say the legislation has – or will – increased or decreased your costs in relation to fire safety?
- Do you have automatic fire safety systems? Are they effective? Do you keep them regularly maintained?
- Is carrying out a fire risk assessment a condition of your insurance?
- Are high safety standards a selling point for your business?

One of the essential requirements under the FSO is for the RP to carry out a risk assessment; we'd like to find out more about your experience in this area.

- Has a fire risk assessment been carried out for your premises? If not, do you intend one to be done?
- Is the fire safety risk assessment something you did yourself or did you seek specialist help and expertise? Why?
- Did they have any formal fire qualifications? Did you pay for this help? Did it represent good value for money? How did you find this expertise? Were they accredited by any organisation? Having seen the outcome, is the risk assessment something you think you could do yourself in future?
- How equipped do you feel to carry out your own fire safety risk assessment?
- Are you comfortable with the non-prescriptive approach to fire safety which allows you to decide what measures are most appropriate in the particular circumstances of your premises and business/enterprises?
- What guidance would you like to see?
- Where did/would you look for advice or guidance on the fire risk assessment process to help you?
- Are you able easily to access helpful advice and guidance on how to carry out a risk assessment?
- Have you seen the CLG technical guidance documents which offer more detailed technical fire safety advice to responsible persons?
- Did you use them? Purchase or download?
- Were they helpful? Could they have given more or better information? Do you have any specific comments/observations on this material?

- Did you see the guidance as standard against which to compare you own fire safety arrangements; or as setting out a series of requirements?
- Did you /would you consider undertaking specific training in fire safety risk assessment? Where would you look for a supplier?
- Did you take specific account of the needs of all those likely to be on your premises (ie, not just employees) including members of public and specifically those likely to be vulnerable in a fire such as the disabled, elderly or very young?
- The Fire Safety Order sits within a wider legislative framework and we are interested in the links – and practical implications of these – to other pieces of legislation. Are your fire safety arrangements affected by other legislative requirements? Are you clear about how you satisfy all the requirements on you? Where do you go for clarification/advice?

Under the FSO, the Fire Service (and a number of other enforcers eg, HSE, Crown Premises Inspectors Group, Housing Officers, MoD) has a statutory duty to audit and, where necessary, enforce the requirements of the FSO. The Fire Service carries out this duty on the basis of its view of the relative risk of fire in individual premises. So, those premises identified as 'high risk' should receive more audit/ inspection attention from the Fire Service. This part of the discussion aims to find out more about how the Fire Service (and where relevant, other enforcers) deliver their audit and enforcement responsibilities under the FSO.

- Would you consider your premises to be a low, medium or high fire risk?
- Do people sleep on them at certain times?
- Have you had any contact with your local Fire Service since the FSO was introduced in October 2006? Describe.
- Have you had a fire audit to assess your level of compliance?
- Did the Fire Service inform you of their enforcement policy?
- How would you describe the experience? (eg, helpful, intimidating, useful, heavy handed, etc)
- What was the outcome?
- The Fire Service has a range of enforcement measures available to it including agreeing action plans for improvements with responsible persons, issuing formal enforcement notices which require specific improvements, prohibiting the use of a premises, and or taking responsible persons to Court for significant breaches. In your view, was the outcome of the audit proportionate to the level of identified risk?
- Did you disagree with the outcome of the audit? Were you able to challenge it? How did you go about this?
- Have you been prosecuted under the FSO? What impact has this had on your business/organisation?

The Fire Service also has a responsibility to educate and inform their communities about fire prevention measures and on how to secure an appropriate means of escape. This part of our discussion aims to capture your experience, if any, the local Fire Service.

- Did/Would you seek advice on fire safety measures from the Fire Service?
- Was/Is this in response to a general query or because of specific issues/considerations you face eg, hazardous substances; means of escape for disabled people; complex/multiple sites; more than one enforcer
- Were the Fire Service helpful – direct you to appropriate sources?

CLG recognises that the FSO is still quite new and is genuinely interested in your views on what should or could be done to facilitate greater awareness of the requirements of the FSO and benefits of a risk based approach to fire safety.

- Are there any issues which need to be addressed or clarified urgently?
- Your thoughts on how we ensure the requirements of the FSO do not represent an unnecessary burden on business would also be appreciated.
- Do you feel that your business representative bodies are helping to improve awareness/understanding of the new legislation?

7485/DD

RESEARCH INTO FIRE SAFETY ORDER 2005 TOPIC GUIDE – FIRE SAFETY INDUSTRY

Introduction

- Explain background to the study, reasons for research, and use of results:
 - *We are conducting an interim review of the Regulatory Reform (Fire Safety) Order 2005 on behalf of the Department for Communities and Local Government*
 - *As part of a wide reaching research study, FDS are consulting Fire Safety Industry Representatives to see how the FSO has been bedding in so far and the impact the FSO has had*
 - *Research will be used by CLG to establish whether the original aims and objectives of the FSO are being met, understand how the FSO has affected Fire Safety and inform their policy direction going forward – ensuring they make the best use of resources to build awareness of the FSO*

Permission to record, confidentiality – while their feedback will be included, their identity will not be revealed in the final report – but CLG will know they took part in the **research**

- Explain we are **not** here to vet them on behalf of CLG – we want to understand the real issues that are being encountered

Respondent role

- Brief exploration of the respondent's organisation and their role within it
- What is your relationship with responsible persons and enforcers?
- How does the industry see itself contributing to increased fire safety?

Overall impact of the FSO

- What are your first impressions of the impact the FSO has had?
- How have things changed for the Fire Safety Industry since the introduction of the FSO?

Competent persons/third parties

[Note to interviewers – you will need to assess whether you are talking to an umbrella organisation or an individual company offering fire safety advice/ expertise and tailor the questions accordingly]

- Are you aware of any instances where a responsible person has used external help to assist in their risk assessment?

- If so, what sort of help are they using?
- What are your views on the use of these third parties?
- Does it work well? Are you confident in the service that these third parties are providing? Are you concerned about the possibility slipping standards/of the industry getting a bad name/cowboys
- What should be done to improve this? 3rd party accreditation schemes (look for agreed standards)
- Need for a National registration/accreditation scheme for companies offering these services?
- (Probe for what they know on schemes already in place – get an idea of numbers of consultants on such a scheme)
- Are you aware of the CFOA/FPA guidance on automatic fire detection systems (AFDs) What are your views?

Awareness of the FSO among responsible persons

- What would you say is the general level of awareness/understanding of the Fire Safety Order among responsible persons?
- What is the level of understanding and compliance with of the FSO?
- How does this vary? (Probe on: industry/type of organisation)?
- If necessary – what could be done by the fire industry to improve the awareness/understanding of the FSO amongst responsible persons?

Impact of the FSO on responsible persons

- The FSO requires a responsible person to be identified for all non-domestic premises. What impact has this had?
- Are there any areas where responsible people are encountering specific difficulties in complying with the FSO?
- Do you think there is the right level of information/guidance/assistance available to responsible persons to help them fulfil their duties under the FSO?
- Do you think there is anything else that could be done to help responsible persons to comply with the Fire Safety FSO?
- Do you think there is more you could do? (If not them, who else needs to do this?)

Guidance

- What is your opinion on the guidance documents provided by CLG for responsible persons? (Probe on: are they comprehensive/useful/easy to understand/easy to interpret?)

- Do you think the guidance is sufficient to help responsible people comply?
- Do you have any concerns about the guidance?
- Do you view the guidance as a minimum standard or suggested requirements?
- What if people can't comply with the letter of the FSO, what then?

Overall

- What impact do you think the FSO has had on Fire Safety? (Probe on: Has it reduced avoidable fires? Has it helped reduce death/injury/loss of property?)
- To what extent does the FSO contribute to improving performance of Automatic Fire Detectors.
- What are the strengths and weaknesses of the FSO?
- Have the arrangements put in place to implement the Fire Safety Order been adequate? If not, what would you like to have seen?
- What changes do you think should occur over the next 18 months/3 years to improve the implementation of the FSO?

The Regulatory Reform (Fire Safety) Order 2005, introduced in October 2006, simplified the law on fire safety by replacing over 70 separate pieces of fire safety legislation. This report provides a snapshot evaluation of how the Fire Safety Order is bedding in after 18 months – 2 years with enforcers, ‘responsible persons’ and the fire safety industry.

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