

Michael Appleby reminds managers that they may have duties as the 'responsible person' under the Regulatory Reform (Fire Safety) Order 2005

In the line of fire

FIRE SAFETY RESPONSIBILITIES

The Regulatory Reform (Fire Safety) Order 2005 (FSO) came into force in October 2006, its purpose being to consolidate the general fire safety precautions of a large number of pieces of legislation, which have now been revoked.

The Order shifts the responsibility for fire safety firmly on to the shoulders of businesses and building occupiers. It is also said to adopt an approach to fire safety that is based on 'fire engineering principles' rather than prescriptive standards or measures.

The requirements of the FSO are similar to those that existed under the Fire Precautions (Workplace) Regulations 1997 (FPWR), but are now applicable to a far larger range of premises. However, there is another important difference and that is the application to individuals.

The FPWR placed duties for fire precautions upon the employer and any person who had "to any extent, control of a workplace". This person was defined as someone who had control of the workplace "in connection with the carrying on by him of a trade, business, or other undertaking". It was therefore not aimed at the employer's managers but any person carrying out a business at that workplace who had some control of the workplace in relation to fire safety.

The FSO, in contrast, places duties on the responsible person. This person is defined in Article 3 in relation to a workplace as "the employer, if the workplace is to any extent under his control".

Other persons also have duties under the FSO. Article 5(3) provides: "Any duty imposed. . . on the responsible person in respect of premises shall also be imposed on every person, other than the responsible person. . . who has, to any extent, control of those premises so far as the requirements relate to matters within his control".

So, there are two important requirements for someone to be the 'other person'. These are:



Illustration by Arthur Phillips

- that this person has control of the premises; and
- that this control relates to the duties imposed by the Order on the responsible person.

This is wider than existed under the FPWR. The FSO allows for prosecution of an organisation as employer for breaches of the legislation, and prosecution of managers within that organisation if they are deemed to have responsibility for fire safety. For example, it is feasible that a facilities manager with powers (no doubt including budgetary control) to carry out maintenance, or order change could come within the terms of Article 5(3).

It would appear that it is a deliberate aspect of the FSO to allow enforcement not only against organisations but individuals who are deemed culpable and/or in a position to remedy contraventions.

This is in line with the general focus of enforcement these days of health and safety legislation, which is to consider not only organisations but their management as well. Paragraph 41 of the HSC's Enforcement Policy Statement says prosecutors, when investigating health and safety breaches by organisations, should

"consider the management chain and the role played by individual directors and managers...".

If an individual is prosecuted for contravening the FSO his/her case can be heard either in the Magistrates' Court or the Crown Court. If convicted in the former an individual can be fined up to £5000 but in the Crown Court he/she can be subject to an unlimited fine and/or a term of imprisonment not exceeding two years.

To date there have not been any prosecutions under the Order to test the legislation. Anecdotal evidence suggests that Fire Authorities are indeed looking at the management chain in their current investigations, with a view to possible prosecution. It may well be that the scope of Article 5(3) is far wider than intended by those who drafted the legislation. It is perhaps only a matter of time before this provision is before the Court of Appeal for consideration.

In the meantime any manager who suspects he/she may have an individual responsibility for fire safety under the FSO would do well to consider their job description and discuss their position with their employers. ■