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**ENFORCEMENT
POLICY**

1. Scope

This policy applies to the Fire Protection arm of the Service, who have been delegated powers and responsibilities for enforcing Fire Safety legislation on behalf of the Authority (Cumbria County Council).

2. Aims and Objectives

This policy is designed to assist the Cumbria Fire & Rescue Service to meet its statutory duty to enforce fire safety legislation and to reduce the risk of fire causing death, serious injury and property related losses in the community. It provides for a risk based approach to fire safety inspection; forms a fundamental element of the Authority's fire risk reduction strategy; and outlines how the Fire and Rescue Service prioritises the demand for its services in relation to fire safety.

3. Policy

Cumbria Fire & Rescue Service is responsible for enforcing the provisions of:

- The Regulatory Reform (Fire Safety) Order 2005.
- The Construction (Health, Safety & Welfare) Regulations 1996 referred to as the **Construction Regulations**.
- **The Dangerous Substances and Explosive Atmospheres Regulations 2002** in relation to petroleum licensed premises.

THE ENFORCEMENT OF FIRE SAFETY AND HEALTH & SAFETY LAW POLICY STATEMENT.

THIS ENFORCEMENT POLICY REFLECTS THE PROTOCOLS EMBODIED IN THE LOCAL GOVERNMENT CONCORDAT, TO WHICH CUMBRIA FIRE & RESCUE SERVICE SUBSCRIBE.

In order to protect and serve the community of Cumbria, the Fire Service will seek to secure compliance with the laws it is responsible for enforcing. Many of the dealings of the Fire Service with those on whom the law places duties (the duty holders i.e.

employers, employees and others) are informal - Fire Safety Officers and Operational Firefighters provide information, advice and support both face to face and in writing. They may also use formal enforcement mechanisms including Enforcement Notices, Agreed Action Plans and Prohibition Notices or ultimately prosecution.

Much of modern Fire Safety and Health and Safety Law is goal setting - setting out what must be achieved but not how it must be done. Advice on how to achieve the goals is often set out in Codes and Guides describing good practice. Neither codes nor guidance material are in terms which necessarily fit every case. In considering whether good practice has been adopted Fire Service personnel need to take relevant codes or guidance into account, using sensible judgement about the extent of the risks and the effort that has to be applied to counter them. Sometimes the law is prescriptive - spelling out in detail what must be done. Prescriptive law limits the discretion of the duty holder and the enforcer.

PRINCIPLES OF ENFORCEMENT

The enforcement of Fire Safety and Health and Safety Law should be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach, *targeting* of enforcement action and *transparency* about how Cumbria Fire & Rescue Service operates and what those persons being regulated may expect.

PROPORTIONALLY

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by Fire Safety Officers and Firefighters to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach.

Some health and safety duties are specific and mandatory - others require action so far as practicable. In general, the concept of proportionality is built into the regulatory system through the principle of 'So Far As is Reasonably Practicable'. Deciding what is reasonably practicable to control risks involves the exercise of judgement by duty holders and discretion by enforcers. When duty holders and the Fire Service cannot reach agreement, final determinations on what is reasonably practicable in particular circumstances are made by the courts. When the law requires that risks should be controlled so far as is reasonably practicable, the Fire Service when considering protective measures taken by duty holders should always take account of cost as well as the degree of risk.

The Fire Service may legitimately expect that relevant good practice will be followed. Where relevant good practice in particular cases is not clearly established, Fire and Health and Safety Law effectively requires duty holders to assess the significance of the risks (both their extent and likelihood) to determine what action needs to be taken. Some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences. At the other extreme, some risks may be so trivial that it is not worth spending more to reduce them. In general, risk reducing measures would be weighed against the associated costs. If there is a

significant risk; the duty holder must take measures unless the cost of taking particular actions are clearly excessive compared with the benefit of the risk reduction.

CONSISTENCY

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Duty holders managing similar risks expect consistency from the Fire Authority in the advice tendered; the use of enforcement notices and decisions on whether to prosecute. In practice consistency is not a simple matter. The Fire Service is faced by many variables; the level of hazard, the attitude and competence of management, the history of contravention's and incidents may vary between companies which may otherwise appear similar. The decision on enforcement action is a matter of judgement and the Fire Service should exercise discretion.

TARGETING

Targeting means making sure that inspection is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for that risk and who are best placed to control it.

When formal enforcement action is necessary, the person responsible for creating a risk should be held accountable for it. Where several duty holders share a responsibility the Fire Service will take action against those who can be regarded as primarily in breach (i.e. chiefly responsible).

TRANSPARENCY

Transparency means helping duty holders to understand what is expected of them and what they should expect from the Fire Service. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory. This statement sets out the general policy framework within which the Fire Service will operate. Duty holders need to know what to expect when Fire Safety Officers and Firefighters call and what rights of complaint are open to them.

THE TECHNICAL FIRE SAFETY ENFORCEMENT LOGIC

Transparency means helping duty holders to understand what is expected of them and what they should expect from the Fire Service. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory. This statement sets out the general policy framework within which the Fire Service will operate. Duty holders need to know what to expect when Fire Safety Officers and Firefighters call and what rights of complaint are open to them.

Fire Safety Officers carry out audits on premises in accordance with priorities clearly laid down on a basis of risk posed to the occupants. The first stage of that audit is to follow the nationally approved form which is designed to be an objective method of assessing initial compliance level with fire safety legislation. From that position, the Fire Safety officer then establishes the required action to be taken to address any shortfalls. This may vary from prohibition, (in cases of serious and imminent risk), to enforcement notices, agreed action plans and letters advising on areas of minor non-compliance.

Where action is required to be taken by the responsible person(s), Fire Safety Officers are guided to balance the weight of enforcement, and the time to remedy the matters identified, against the risk posed and the ability to achieve the requirements. In addition, responsible persons are advised of their right to appeal to the Secretary of State if the matter is of a technical nature, and to the courts against any notice.

WHEN TO PROSECUTE

The Fire Service will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote Fire Safety and Health and Safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

The Fire Service will consider prosecution when:

- Is it appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offenders, others may be deterred from similar failures to comply with the law;
- Or there is judged to have been potential for considerable harm arising from breach;
- Or the gravity of the offence, taken together with the general record and approach of the offender warrants it, e.g. apparent reckless disregard for standards, repeated breaches or persistent poor standards.

PROSECUTION ON INDIVIDUALS

Subject to the above, the Fire Service will identify and prosecute individuals, including company directors and managers, if it is considered that a conviction is warranted and can be secured.

LAW BREACH LEADING TO DEATH

Where there has been a breach of the law leading to a death the Fire Service will consider whether the circumstances of the case might justify a charge of manslaughter. Liaison will take place with the Police, Coroners and CPS. If the Police or the CPS decide not to pursue a manslaughter case, the Fire Service will prosecute under the relevant Fire or Health and Safety legislation if that is appropriate.

4. Equality and Diversity Impact Assessment

This policy has been subject to an equality and diversity impact assessment and an action plan has been prepared.

5. Reference Documents

Community Safety Strategy
Fire Protection Policy Statement

6. Approval Agency

SMT

7. Approval Dates

This policy was originally approved in: 2008

This policy was last reviewed in: 2009

Next review date: 2010

8. Policy Sponsor

Director of Policy and Performance Review.

9. Diversity and Equality Statement

Cumbria Fire and Rescue Service is committed to the principles of diversity and equality and the elimination of discriminatory practices. These principles are applied to the treatment of all individuals, whether members of the public, or our own staff, be those fire officers, support staff or volunteers.

This policy will be implemented in a non-discriminatory manner. Members of Cumbria Fire and Rescue Service administering this policy are responsible for ensuring that in their application, those to whom the policy applies, shall not receive less favourable treatment because of their age, colour, disability, ethnic or national origin, gender re-assignment, marital status, nationality, race, religion, sex or sexual orientation.