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# **FIRE SAFETY LEGISLATION & ENFORCEMENT**

**Report of the  
Interdepartmental Review Team**

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June 1994

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Interdepartmental Review Team**

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*This report was commissioned by the President of the Board of Trade, the Home Secretary, the Secretary of State for the Environment and the Secretary of State for Employment.*

*This report was prepared by a Review Team which consisted of  
Alex Galloway, Sandra Caldwell, Peter Edmundson and Geraldine Mahon.*

*The Departments with relevant policy responsibilities will consult the main interest groups they identify as likely to be affected by the recommendations. The consultation period will end on 30 September 1994. Enquiries about inclusion in this consultation exercise should be addressed to the most relevant department (contact details overleaf).*

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## PREFACE

This is the Report of a scrutiny which was established on 17 January 1994 with the following terms of reference

'Taking account of the review of the operation and effectiveness of the Fire Precautions Act 1971 recently undertaken by the Home Office, to review the operation and effectiveness of all legislation for which Home Office, DOE and HSE have policy responsibility in relation to fire safety; to review the organisational arrangements of all relevant bodies and agencies, including local authorities, responsible for enforcing this legislation, and to make recommendations. The study should identify any areas of overlap, duplication or lack of clarity between the responsibilities of enforcement bodies, and should recommend ways of dealing with them. It should also address the practicability of bringing all policy responsibility for fire safety together in a single department.'

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The Scrutiny was not a formal Efficiency Scrutiny under the auspices of the Cabinet Office, but adopted many of the features of those exercises, including the standard timetable of 90 working days, giving us a deadline of 25 May 1994.

The scrutiny team consisted of Alex Galloway (Department of the Environment), Sandra Caldwell (Health and Safety Executive), Peter Edmundson (Home Office) and Geraldine Mahon (Department of the Environment). The scrutiny machinery and the methodology adopted are described in Annex A.

The terms of reference of the scrutiny are wide, but, since they are limited to the legislation for which the three named Departments have policy responsibility, they did not cover a number of areas which were drawn to our attention during the course of the scrutiny. These include the fire safety aspects of consumer products, the effects of fire and firefighting on the environment and the economic effects of fire and firefighting.

It is also necessary to say a word about Scotland. Two of the major pieces of legislation we have considered, the Fire Precautions Act 1971 and the Health and Safety at Work etc Act 1974, apply to Scotland. Scottish building control legislation, however, is different from its counterpart in England and Wales. In the time available to us we have not been able to examine in detail the implications for Scotland of our conclusions and recommendations, though, in order to make our report as complete as possible as a source of reference, we have included the main features of Scottish legislation in Annex B.

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set.

Finally we wish to acknowledge the help and co-operation we have received during the course of this scrutiny. We are particularly grateful for the ready assistance and access afforded to us by the members of the Contact Group (listed in Annex A). A very large number of people and organisations took the trouble to submit written and oral evidence to us, all of which contributed greatly to our understanding of the issues. We are particularly grateful to those listed in Annex A2, who acted as our hosts during our fact-finding visits. Without exception they went to great trouble to ensure that we obtained the maximum information from these visits, which provided a valuable opportunity to see as many as possible of the workings of the legislation at first hand.

Thanks are due to the Deregulation Unit of the Department of Trade and Industry who arranged all that was necessary by way of accommodation and equipment for the scrutiny, and who remained commendably cheerful in the face of the significant increase in their workload arising from it.

## ABBREVIATIONS

Some expressions crop up so frequently in this report (or are so unwieldy) that we have succumbed to the temptation to abbreviate them. They are listed below.

BCO	Building Control Officer
CACFOA	The Chief and Assistant Chief Fire Officers' Association
CIMAH	Control of Industrial Major Accident Hazard Regulations 1984
DFE	Department for Education
DH	Department of Health
DOE	Department of the Environment
DSS	Department of Social Security
EC	European Community
EHO	Environmental Health Officer
FC(SP)	The Fire Certificates (Special Premises) Regulations 1976
Regulations	
FPA 1971	Fire Precautions Act 1971
FPO	Fire Prevention Officer
FSA	Fire Services Act 1947
HA	Housing Act 1985
HELA	The Health and Safety Executive/Local Authority Liaison Committee
HFL	Highly flammable liquids
HMO	House in multiple occupation
HO	Home Office
HSWA	Health and Safety at Work etc Act 1974
HSC	Health and Safety Commission
HSC E	The Health and Safety Commission and its Executive
HSE	Health and Safety Executive
LANTAC	Local Authorities National Type Approval Certification
MHSW	The Management of Health and Safety at Work Regulations 1992
Regulations	
MOD	Ministry of Defence

## EXECUTIVE SUMMARY INCLUDING SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

This summary is in two parts. The first part is intended to set the scene and to explain the main thrust of our proposals. The second is a detailed summary of our conclusions and recommendations. Owing to the nature of the subject this section should be regarded as a guide to the main body of the report and not a substitute for it. Condensing our proposed changes into a few paragraphs inevitably means omitting matters of detail which are important for a full understanding of their implications.

The subject matter and the thrust of our proposals

The legislation we were asked to examine has two main strands:

- building control legislation, which among many other purposes, seeks to ensure that new buildings, or buildings undergoing structural alterations, have adequate means of escape and are constructed so as to resist the spread of fire. This applies to most buildings including domestic premises; and
- fire precautions legislation, which deals with the continuing management of existing buildings, and applies to workplaces, including those to which the public has access for such purposes as shopping, accommodation and leisure, but not to single domestic dwellings. It covers both *general fire precautions* (which are concerned with matters such as keeping escape routes clear, fire extinguishers, alarms and fire drills) and *process fire precautions* which deal with the control of hazardous processes or work activities in order to prevent the outbreak of a fire, or to reduce the spread of fire to allow people to reach a place of safety.

The main theme of our findings is that the current system of fire legislation would benefit from rationalisation and simplification. There are important gaps in its coverage, and the existing framework of domestic and European legislation leads to overlap and confusion and unnecessary burdens to business. To address this we recommend the following main changes, among many others:

- General fire precautions in premises should be brought within the same legislative framework as other health and safety legislation. The current administrative arrangements, under which general fire precautions and other workplace risks (including process fire risks) are addressed separately, add unnecessarily complexity and increases costs. It has also led to European directives being implemented through two sets of regulations where one would do. The special nature of general fire

precautions should be recognised by the retention of specific provision within health and safety legislation, enforced by fire authorities in their own right. This would be achieved by making the Fire Precautions Act 1971 a 'relevant statutory provision' of the Health and Safety at Work etc Act 1974, and by making fire authorities the enforcing authorities, in their own right, through regulations under the same Act.

- The main feature of general fire precautions legislation in occupied premises should be a general statutory duty on the owners and occupiers of premises to provide and maintain adequate fire precautions. Compliance with this duty should be checked by fire authorities. The current system under which certain premises are issued with a fire certificate should be substantially modified. A simpler form of certification should be retained only for premises where there is a higher life-risk if fire should occur. Many lower life-risk premises should be removed from the scope of certification altogether.
- Compliance with the statutory duty should be through the risk assessment mechanism already required by EC health and safety directives. The new style certification, where it is required, should be based on the outcome of the risk assessments prepared by owners and occupiers.
- National standards dealing with the physical aspects of fire safety should be drawn up setting out the goals to be achieved. Guidance and codes of practice should be prepared and made available to help owners and occupiers meet these goals. The national standards should replace the fragmented fire safety provisions to be found in local Acts and byelaws, licensing and registration legislation, Government circulars and other miscellaneous Acts and regulations. This will provide a coherent and more easily understandable legislative framework.
- The boundary between building control and the management of occupied buildings should be clarified. We do not consider that the two strands of legislation can be combined into a single system, for reasons we explain in the report. But we consider that the building control process should cover all the physical fire precautions required in a building up to the point of occupation. Responsibility for checking general fire precautions after occupation should remain the responsibility of fire authorities.

## Guiding principles

Throughout the review we have been guided by three fundamental principles, namely that our recommendations

- should reduce compliance burdens without adding to administrative burdens (while recognising that there may be transitional costs).
- should involve no weakening in the level of safety provided by the regulatory system and, if possible, enhance it.
- should work, wherever possible, with the grain of recent developments building on or reinforcing existing duties.

We have also assumed that no additional resources will be available for the enforcement of fire safety legislation.

## Reducing unnecessary burdens

In the time available it has not been possible to produce a detailed cost benefit analysis to support our proposals. However, for the reasons set out below we consider that our recommendations should have the net effect of significantly reducing the overall regulatory burden.

## Implications for business

The major deregulatory benefits accrue from:

***Simplification:*** One of the major criticisms of the current control of fire safety is that it is uncoordinated, conflicting and thereby confusing. Introducing a coherent and more easily understood legislative framework should substantially reduce the hidden costs on business by saving the time and effort of management and professionals.

***Reduction of compliance burden:*** our proposals, by achieving a better match between regulatory control and risk should allow a lighter touch to be applied *without* reducing standards of safety, for example:

- adopting the goal-setting approach of the HSWA should provide business with the flexibility to match precautions to risk; and in doing so, should provide the flexibility to prioritise competing areas of expenditure on the basis of relative risk;
- introduction of a general duty, similar to those of the HSWA with which business is already familiar, should provide for the revocation of the fire safety provisions in a majority of the 50 or so miscellaneous Acts and Regulations listed in Annex F and in the 30 or so local Acts listed in Annex H.

- rationalising the approach to the implementation of EC health and safety directives should ensure that the compliance burden is kept to a minimum. In the future for each directive there would be a single set of implementing Regulations (instead of two or more at the moment) which should deal with both general fire precautions and other aspects of health and safety including process fire risks. For example, our recommendation that the proposed Fire Certificates (Places of Work) Regulations should be amalgamated with the existing Management of Health and safety at Work Regulations 1992 should avoid business having to produce two separate risk assessments. This should not only produce a saving in the latest HO cost compliance assessment which estimates the cost to be £850 million over 10 years, but could also lead to improvements in safety.
- revocation of the Fire Certificates (Special Premises) Regulations should remove a layer of unnecessary legislation without affecting workplace and public safety; and the consolidation of petroleum legislation with the regime governing other highly flammable liquids should sweep away a number of anomalies and allow an integrated approach to the control of such substances.
- Although we recommend that a form of certification should be retained for higher life-risk premises this will be *simpler and cheaper* since it will flow from the risk assessment which owner/occupiers will *already* be required to carry out in response to EC directives. We recognise that certain higher life-risk premises (eg houses in multiple occupation) which have not been subject to certification under the current system, will in future require a certificate under our recommendations. But at the same time many lower life-risk premises (eg offices, many shops and factories) should no longer be subject to certification. For example, a majority of the 26,000 offices and a fair proportion of the 38,000 factories and 16,000 shops currently certificatable under the FPA 1971 may well fall into the lower life-risk category. This does not take into account premises currently certificated under the Factories Act 1961 or the Offices, Shops and Railway Premises Act 1963. In addition, the new procedures for updating certificates should be far less bureaucratic and time-consuming.
- under our proposals BCOs will need to consult fire authorities on fewer buildings, bringing savings in time and resources to all parties involved.
- adoption of a single set of national fire standards should mean that premises which need one or more licences (such as hotels, theatres and cinemas) will no longer be subject to separate inspections for each licence application and a variety of different standards.

*One-stop shop for building control:* Architects and developers should benefit from establishing Building Control Authorities as the "one-stop shop" for all aspects relating to the physical fire precautions of a building under construction or alteration. The goal-setting framework of the national standards should also facilitate the development of innovative techniques and approaches.

*Improving consistency:* bringing all regulated premises within the same legislative framework should enable the many different standards which currently apply to be replaced by a single national set of standards. These should:

- make possible the repeal of the fire precautions provisions in local Acts and byelaws thereby providing a level playing field for business since it will no longer be required to meet different fire safety requirements in different areas of the country.
- provide industry with an opportunity to help in shaping standards through representation on the recommended new advisory panel to replace the current Fire Advisory Panel.
- make possible, in the longer term, greater self-compliance in the building control process.

*Change in appeal procedures:* we recommend that the determination procedure for Building Regulations matters should be retained but that appeals in relation to fire precaution matters in occupied premises should no longer be to the Magistrates' Court but should be based on the current tribunals arrangements which apply under HSWA. This should provide a speedier, more user friendly appeals mechanism for a refusal to issue a fire certificate and other decisions of the fire authority.

#### Implications for enforcing authorities

Our recommendations are intended to define clearly the responsibilities of the individual enforcing authorities involved in the enforcement of the different aspects of fire safety (building control authorities, fire authorities and HSE) and to ensure there are suitable mechanisms in place to encourage consistency of interpretation between these authorities. The overall result should be an improvement in both effectiveness and efficiency without any lowering of standards; and the provision of a better service to business.

There will be an extension of building control authority responsibilities (recommendation 21) However, the costs involved should be marginal and recoverable from the fees charged. The overall cost to the client should not increase as the marginal increase in fees at the building control stage should be balanced by the simpler and cheaper certification procedure.

Placing a general duty on the owner/occupier of non-domestic premises to provide and maintain adequate fire precautions will enable the fire authority to use a lighter touch for lower life-risk premises and concentrate resources where they are most needed. The implementation of our proposals will change the working practices of Fire Brigade Fire Safety departments and there may be concern that brigades do not have the resources to operate the new regime.

In the time available to us it has not been possible to complete a detailed analysis of every brigade's workload and assess the implications of our proposals upon them. However, work carried out for us in a medium-sized brigade indicates that the *effects of our proposals will be cost neutral*. This work used national Shire average inspection times and was based on the following assumptions:

- 11. • the definition of high, medium and low life-risk will be similar to that described in HO guidance;
- a 5% annual random sampling of non-certificated premises will be conducted to monitor compliance;
- places of public entertainment, together with higher life-risk licensed premises will continue to be inspected during performances; and
- a proportion of applications for occasional licences will be inspected on the basis of risk assessment

We have not proposed any increase in HSE's fire precautions enforcement role; indeed this will be marginally reduced with the revocation of the FC (SP) Regulations. However, the amalgamation of the proposed Fire Precautions (Places of Work) Regulations with the MHSW Regulations and the introduction of the risk-assessment approach to regulation of general fire precautions is likely to increase the day-to-day liaison between fire authorities and HSE Inspectors at local level. *This may have resource implications for HSE.*

However, the major resource implications for HSE will arise from the considerable policy and legal work required to bring forward the recommended legislative changes. This matter is discussed in conjunction with the machinery of government issues (paragraph 269.)

### Maintaining standards of fire safety

One of our main concerns was the maintenance of standards of fire safety. We consider that our proposals meet this requirement in a number of ways.

- The introduction of a new all-embracing general duty on the owners/occupiers of premises to provide and maintain adequate fire precautions, so far as reasonably practicable. This will, for the first time, ensure that general fire precautions can be kept up-to-date, and are not frozen, as at present, at the time a fire certificate is issued.
- Making the FPA 1971 a relevant statutory provision of the HSWA. This means that any subsequent changes made to it must be designed to maintain or improve existing standards, since this is a statutory requirement (section 1(2) of the HSWA).
- Our recommendation that the fire authorities should continue to have the statutory responsibility for the enforcement of general fire precautions without any diminution of their enforcement powers.
- The retention of a form of certification for higher life-risk premises.
- We recommend in the report that fire authorities should be given a statutory responsibility to promote public fire to the public.
- Retaining the requirement for BCOs to consult the fire authorities on building control applications involving premises likely to be subject to certification. This will ensure that the expertise of the fire service will continue to be at the disposal of BCOs and developers.
- { We recommend in the report that all new buildings should be given an occupation certificate on completion of the building control process. This would be issued only if the physical fire precautions are satisfactory.
- The introduction of national fire safety standards ensuring that the same general principles of physical fire safety are applied to all premises.

## Conclusions and recommendations

1. The 'Holroyd' distinction between the fire safety regimes for buildings under construction and buildings in occupation is still valid and ought to be retained. Fire precautions go wider than physical installations in buildings, and we consider that their management goes beyond what should be the ambit of building control (Paragraph 91).
2. There are gaps and overlaps in current fire safety legislation, which has developed in a piecemeal fashion. Simplification is both possible and desirable, without lessening levels of public or workplace safety (Paragraph 98).

3. The FPA 1971 has been successful in reducing fatalities in regulated premises, but it is no longer the most appropriate vehicle for future fire safety legislation. The general principles of fire safety adopted by the current legislation are, however, sound and should be retained (Paragraph 100).

4. Fire safety legislation should take into account the safety of firefighters and rescuers who have to enter buildings after the outbreak of fire (Paragraph 101).

5. General fire precautions legislation should cover all types of workplace, not simply 'premises' as currently defined in the FPA 1971 (which excludes a number of workplaces which are not buildings or parts of buildings). All classes of premises should be covered by the legislation unless they are specifically exempted, rather than, as at present, exempt unless they are specifically included (Paragraph 106).

6. Treating general fire precautions separately from other aspects of health and safety (including process fire safety) is neither necessary nor helpful. General fire precautions, process fire precautions and other aspects of health and safety should all be brought within the same legislative framework under the umbrella of the HSWA, while retaining specific fire provisions (see recommendation 20) (Paragraphs 115 and 124).

7. This will allow the implementation of various EC health and safety directives to be achieved through a single set of regulations rather than, as currently proposed, through separate streams of legislation covering respectively general health and safety matters and general fire precautions. This will significantly reduce the legislative burden on businesses without losing any of the protection of the directives (recommendations 10 and 40) (paragraph 120).

8. Following the general approach of the HSWA there should be a statutory duty on the owners and occupiers of premises to provide and maintain adequate fire precautions so far as is reasonably practicable (paragraph 125).

9. The HO should not proceed with the proposed Fire Precautions (Places of Work) Regulations (paragraph 127.)

10. General fire precautions should be included in the risk assessment provisions of the MHSW Regulations. This does not represent an additional burden on business, since the proposed Fire Precautions (Places of Work) Regulations would have extended assessments to general fire precautions in any event. The MHSW Regulations therefore should be amended as appropriate, to implement fully the requirements of the Framework and Workplace Directives (paragraph 129).

11. The general duty, coupled with the requirements of the MHSW Regulations, should make unnecessary many of the fire safety provisions of the Acts and Regulations listed in Annex F. These separate fire provisions should be reviewed and retained only if the provisions cannot be met by the proposed general duty and risk assessment requirements (Paragraph 132).

12. Fire authorities should continue to have the statutory responsibility for enforcing general fire precautions. They should exercise this authority in their own right, and not as agents of the Health and Safety Commission or its Executive. Regulations under section 15 of the HSWA should be made in order to bring this about (Paragraph 142).

13. There should be no diminution of the enforcement powers available to fire authorities under the FPA 1971 (Paragraph 142).

14. Fire certification under the FPA 1971 is imprecisely targeted and does not allow sensible modernisation of fire precautions. It should be discontinued on the current basis (Paragraph 145).

15. A simpler and less costly form of certification for certain types of premises where there is a high life risk should, however, be retained for reasons of public confidence. For such premises certificates should flow from the risk assessment, the outcome of which would be recorded and submitted to the fire authority for approval together with a simple plan of the building (Paragraph 146).

16. Owners/occupiers should revise the contents of the new type certificate as often as appropriate recording the minor changes made, but only resubmitting it to fire authority for approval in respect of substantial modifications meriting reappraisal of the risk control arrangements and the adjustment of precautions (Paragraph 149).

17. Certification should be discontinued altogether for many low life-risk premises currently designated under the FPA 1971 (Paragraph 153).

18. Fire Authorities should have the power to exempt premises from the new certification requirements (paragraph 153).

19. As at present, fire authorities should be empowered to charge for certification of work, though since the responsibility for preparing the material which will form the certificate will fall to the occupier of the premises, the charges for approving certificates should consequently reduce. Fire authorities' charging policies should be reviewed in view of concern about the varying charging policies of different fire authorities (Paragraphs 154 and 155).

20. The FPA 1971 should not be repealed. It should become a relevant statutory provision of the HSWA, thereby enabling its provisions to be modified to reflect the new approach recommended. Any such modification would be covered by the requirement of the HSWA that it should be designed to enhance or maintain standards (Paragraphs 157 and 158).

21. Building control authorities should have statutory responsibility for the entire building control process up to occupation of the building, including the additional physical fire precautions currently catered for through fire certification under the FPA 1971 (Paragraph 166).

22. The coverage of the Building Regulations should be reviewed to seek to include types of premises currently excluded, including schools and Crown premises (Paragraph 166).

23. BCOs should have a statutory duty to consult the fire authority on building control applications where the premises will be (or are likely to be) subject to the new-style certification, or where it is proposed to depart from approved guidance. There should be flexibility to match consultation procedures to the size and complexity of individual buildings (Paragraphs 166 and 242).

24. Occupation certificates should be issued in respect of all buildings at the end of the building control process insofar as the use is known. This should be included in the health and safety file required under the forthcoming Construction (Design and Management) Regulations (Paragraph 168).

25. For speculative buildings provisional occupation certificates should be issued, which would be updated and made final following fitting out/change of use, which would be subject, as now, to building control (Paragraph 173).

26. There is no reason why the enhanced role for building control authorities should not be exercised by approved inspectors (Paragraph 175).

27. Third party certification of fire equipment and systems should be encouraged as a way in which owners/occupiers can demonstrate that they have met their statutory responsibilities (Paragraph 176).

28. The extension of building type-approval should be encouraged (Paragraph 179).

29. Increased self-compliance in building control is a goal worth pursuing when the necessary codes and standards are in place (Paragraph 182).

30. Licensing and registration authorities should in future be required to accept an occupation certificate as evidence of satisfactory fire precautions for new premises. In the case of existing buildings a statement by the fire authority that the owner/occupier is complying with the general statutory duty should similarly be sufficient proof of adequate fire precautions (Paragraph 187).

31. In giving such a statement fire authorities should assess the premises in the light of national standards, and should not act as agents of licensing or registration authorities. Such authorities should not be able to develop and impose their own policies on general fire precautions (Paragraph 187).

32. The owners of houses in multiple occupation should be subject to the statutory duty to provide and maintain adequate fire precautions (Paragraph 191).

33. The Department of the Environment should review the definition of 'house in multiple occupation' in the Housing Act 1985 to try to avoid imposing inappropriate requirements on premises with the characteristics of single private dwellings (Paragraph 193).

34. Fire authorities should enforce the general duty in respect of HMOs, consulting the local authority where it is proposed to take enforcement action (Paragraph 197).

35. Petroleum legislation should be incorporated into the general framework governing highly flammable liquids, with licensing being retained only where the public has access to petrol (Paragraph 199).

36. The FC (SP) Regulations should be revoked. General fire precautions in premises subject to them should instead be subject to the general statutory duty to provide and maintain adequate fire precautions, and should be inspected by fire authorities (Paragraph 202).

37. General fire precautions requirements in premises subject to explosives licensing should be included in HSE's current review of explosives legislation (paragraph 205).

38. General fire precautions on construction sites, should continue to be inspected by HSE (Paragraph 211).

39. In situations where a construction sites occupies part of an existing building in occupation, the fire authority should retain the responsibility for the general fire precautions of the entire building (paragraph 211).

40. Annex IV of the Temporary or Mobile Constructions Sites Directive should be implemented by a single set of regulations made under HSWA (paragraph 211).

41. Fire precautions provisions in local Acts and byelaws should be repealed. If particular local provisions are considered to be valuable in a national context they should be considered for inclusion in national standards (Paragraphs 212 and 213).
42. A new panel should be established to replace the Fire Advisory Panel. Its membership should be drawn from all sectors with an interest in fire matters, including fire safety and fire prevention (Paragraph 217).
43. The new advisory panel should advise Ministers on national standards of physical fire safety measures in the form of the goals to be achieved (Paragraph 221).
44. The new advisory panel should also supervise the preparation of specific guidance and codes of practice to enable the national standards to be applied consistently to particular types of premises. The guidance will help owners and occupiers to meet the statutory duty, who should also be free, if they choose, to adopt alternative approaches which can be shown to meet the national standards (Paragraph 218).
45. Government Departments should co-ordinate all their activities relating to physical fire precautions through the new advisory panel (Paragraph 220).
46. The new advisory panel should make it a priority to ensure that guidance is as concise as possible and precisely matches the needs of its various users. Users should not be expected to acquire a comprehensive library of material much of which will be irrelevant to them (Paragraph 222).
47. The new advisory panel might provide an input into the formulation of British Standards for fire related equipment and systems. It would also be advantageous if UK representation on European standards bodies could be co-ordinated through the panel (Paragraph 223).
48. The new advisory panel should seek to identify topics on which research is necessary, and encourage those commissioning research to address those topics (Paragraph 224).
49. Enforcing authorities should continue to ensure that they have procedures for monitoring their decisions for consistency, and that they have proper procedures for resolving disputes, including user-friendly complaints procedures (Paragraph 226).
50. The HO should examine with fire authorities ways in which a career in fire safety work might be made more attractive within the Fire Service (Paragraph 228).
51. Consistency between enforcing authorities should be addressed by bringing fire safety within the liaison mechanism (HELA) through which the HSE and local authorities seek to ensure consistency of enforcement in general health and safety matters (Paragraph 237).

52. The comments of the fire authority on a building control application should be made available to the applicant by the BCO as a matter of course, and should also be publicly available for inspection on request at the appropriate office of the local authority (Paragraph 241).

53. Fire authorities should have a specific statutory duty to educate the public on fire safety matters (Paragraph 246).

54. Fire authorities should have a power, though not a duty, to make a reasonable charge for fire safety advice to commercial undertakings where alternative sources of advice exist (Paragraph 250).

55. The informal determination service offered by the DOE should be retained in order to continue to provide a way to resolve disputes between BCOs and applicants and building control officers and fire authorities (Paragraph 252).

56. Appeals on fire enforcement matters should lie not to the Magistrates' Courts, but to the tribunal procedures established under health and safety legislation (Paragraph 256).

57. Formal appeals should be a last resort. Disputes should wherever possible be settled in discussion. Fire authorities should ensure that complaints procedures are effective and user-friendly (Paragraph 257).

58. Since there is already a presumption that Crown premises will meet statutory requirements, we see no reason why the Government should not announce that in future fire precautions legislation and building regulations will apply to them, and that they will be inspected by fire authorities, subject to limited exceptions (Paragraph 260).

59. Enforcement of fire safety in Crown premises should be by Crown enforcement notices on the lines of those currently issued by HSE (Paragraph 260).

60. Individual government departments should have to make a case for exempting particular Crown premises on strictly limited grounds (which would include national security) (Paragraph 260).

61. HO and HSE should establish procedures which will allow them to work closely in partnership. As part of this process HO and HSC/E should act jointly in drafting and consulting on any proposed regulations relating to general fire precautions (Paragraph 266).

## Implementation of recommendations: timescales

We consider that our recommendations, if accepted, will need to be implemented in two phases:

*Phase 1: implementation of EC directives.* This will involve

- withdrawing the proposed Fire Precautions (Places of Work) Regulations;
- modifying the MHSW Regulations;
- preparation of enforcing regulations to make fire authorities statutorily responsible for the enforcement of general fire precautions;
- making arrangements to ensure that other regulations currently being prepared by HSC/E to implement other health and safety directives (eg safety signs, temporary or mobile sites) are extended to cover specific general fire precautions requirements;
- establishing the appropriate HELA arrangements.

These recommendations *will not require primary legislation* and should be considered a *priority* to avoid the possibility of infraction proceedings.

*Phase 2: consolidation of fire safety legislation and establishing national standards.* This will be a considerable task likely to require primary legislation in some areas. The consolidation programme will involve:

- making the FPA 1971 a relevant statutory provision of HSWA
- modernisation of FPA 1971 to introduce the new statutory general duty and certification procedures
- extending the scope of Building Regulations to cover the additional physical fire precautions currently catered for through certification under the FPA 1971 and to include types of premises such as schools and Crown premises
- review of legislation listed in Annex F with a view to repealing the fire safety provisions since the general duty together with national standards and codes will render them unnecessary
- review of fire precaution provisions in local Acts and byelaws

- establishing a new advisory panel to replace the fire advisory panel
- revocation of the FC (SP) Regulations
- modernisation of the legislation controlling the use and storage of high flammable liquids and, in particular, the Petroleum Consolidation Act 1928.

The last two items could be taken forward independently of the other items since the Regulations involved are already relevant statutory provisions of the HSWA.

An important advantage of this staged approach, apart from implementing EC Directives, is that phase 1 will help to develop and establish the procedures and arrangements which HO and HSC/E will need to adopt under the proposed new regime (see paragraph 266).

## INTRODUCTION

### Fire safety and Building Control legislation

1. This is not virgin territory. The legislation we have been examining has a long and varied history, and this is only the latest in a series of reviews and reports. Much of the story so far has been documented elsewhere, and it is not necessary to give a detailed account of its development. To set the scene, however, it may be useful to touch on the salient points.

2. Before plunging into the trees it may also be helpful to try to get an overall impression of the wood. Fire safety legislation has two main strands. One seeks to ensure that buildings are constructed in a way which resists the spread of fire and allows the occupants to escape if fire should break out. The other is concerned with the continuing management of occupied buildings. The first strand applies to all types of premises, including private dwellings. The second, by and large, does not. It deals with the continuing management of existing buildings, and applies to workplaces, including those to which the public has access for such purposes as shopping, accommodation and leisure, but not to single domestic dwellings. It covers both *general fire precautions* (which are concerned with matters such as keeping escape routes clear, fire extinguishers, alarms and fire drills) and *process fire precautions* which deal with the control of hazardous processes or work activities in order to prevent the outbreak of a fire, or to reduce the spread of fire to allow people to reach a place of safety. The first strand may be classified, broadly, as building control legislation; the second as fire precautions legislation.

### Building Control legislation

3. The Fire Prevention (Metropolis) Act subjected building in London to detailed control as long ago as 1774. The Metropolitan Building Act 1844 expanded building control in London to cover protection from fire. The Local Government Act of 1858 gave local authorities byelaw-making powers to control building, a power which lasted until 1961. Fire protection was also a feature of the Public Health Acts of 1936 and 1961. Under the 1961 Act, byelaw-making powers relating to building were replaced by *national Building Regulations* applying through most of England and Wales. Building Regulations themselves have developed since 1961: they were recast in 1976 and - under the Building Act 1984 - in 1985 and 1991.

4. The Building Act 1984 reflected a long-standing recognition that it was desirable to have a single Act covering building control. It had been intended to bring forward a Building Bill in the early 1970s, but legislative time could not be found. Instead much of the intended content of the proposed Bill was included in Part III of HSWA (paragraph 11). These provisions were seen as complementary to those in Part I of the Act in that they allowed the HSC and its agents to rely upon the building control system to look after the physical integrity of *buildings and their services*. The regulations limited the improvements in these areas that could be required in existing

buildings by HSE inspectors. The Building Control powers in the HSWA were repealed when the Building Act 1984 came into force.

#### Fire safety legislation in occupied premises

5. The second strand, fire safety legislation for occupied premises, has evolved more haphazardly. One commentator has observed:

*'The reason is historical. With its impulse stemming (like public health law) from the adverse conditions and consequences of industrialisation, it grew from the early nineteenth century in 'piecemeal' fashion, meeting specific, individual needs as when they should arise, until, eventually, it came to cover a broad spectrum of widely diverse types of premises.'*<sup>1</sup>

Fire safety in various types of occupied premises was covered, for example, in the Public Health Act 1936, the Education Act 1944, the Cinematograph Act 1952, the Factories Acts of 1937, 1948 and 1961, the Offices, Shops and Railway Premises Act 1963, the Licensing Act 1964 and the Gaming Act 1968, the Local Government (Miscellaneous Provisions) Act 1982, and the Theatres Act 1968. This patchwork approach to fire safety in occupied buildings has left gaps in the coverage of fire safety legislation and has given rise to differing standards, issues which are developed later in this report.

6. Until the FPA 1971 safety provisions were not enforced by fire authorities. From 1947 until the introduction of the FPA 1971 their role had been restricted to giving free fire safety advice under Section 1(1)(f) of the Fire Services Act 1947. The Factories Act 1961, however, while placing enforcement responsibilities on the Factory Inspectorate, did place a requirement on fire authorities to issue fire certificates in respect of premises used as factories. Fire certificates issued under the Act were concerned with ensuring adequate means of escape. Responsibility for monitoring compliance with certificate conditions and other fire safety matters such as firefighting equipment, fire warning systems and fire drills were the responsibility of the Factory Inspectorate.

#### The Holroyd Report

7. In 1970, the Report of the Departmental Committee on the Fire Service (Cmnd 4371), chaired by Sir Ronald Holroyd, concluded that fire safety law should be consolidated into the two main strands already described in paragraph 2, one applying to new and altered premises, and the other applying to occupied premises. It recommended that the two main branches of fire safety legislation should have common codes of practice of national application. These codes were to standardise the essential requirements but leave a degree of flexibility to enable enforcing

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<sup>1</sup> Dr A R Everton, *An overview of the developing law of fire safety*, Environmental Law and Management, Vol 5 No 6 page 204

authorities to apply them in accordance with the needs of individual premises. The report concluded that it was not practical to combine into a single Fire Safety Act the fire provisions of the Building Regulations and those of legislation applying to occupied premises, though it recommended the consolidation of legislation relating to fire safety in occupied premises.

8. The report also recommended that fire authorities, using their fire brigades for the purpose, should be responsible for enforcing all legislation relating to occupied premises.

9. At the time of the Holroyd report the Home Departments were in the process of preparing new fire safety legislation. The report recommended that this draft legislation, together with the report's own proposals, should be implemented as quickly as possible. The result was the *Fire Precautions Act 1971*. This was the first piece of legislation, and remains the only piece of legislation, under which the Fire Service has a statutory responsibility for enforcement.

#### The Robens Report

10. The Robens Report on Health and Safety at Work published in 1972 also made proposals on fire safety matters. On the general front, the Committee recommended the rationalisation of all aspects of health and safety at work, but on the particular hazard of fire they made specific proposals that:

- the FPA 1971 should be extended to cover *all places of work* so that all public and industrial premises would be subject to the same legislative code dealing with fire precautions;
- dangerous materials and processes should be subject to a comprehensive system of control, responsibility for which should lie with a new, unified inspectorate (HSE); and
- in places constituting 'major hazards' responsibility for all fire matters, including fire certification, should rest with the new inspectorate.

The second of these recommendations introduced the distinction between *general fire precautions* and *process fire precautions*. The meaning of these terms is discussed more fully at paragraph 81 below, but broadly the former are the precautions which should apply in principle to any premises, and are designed to ensure that if fire does occur those in the building are warned in good time and can escape. The latter are concerned with minimising the risk of fire starting and spreading as a result of the processes and activities carried out on the premises.

## Health and Safety at Work etc Act 1974

11. In line with the recommendations of the Robens report, Section 78 of HSWA amended the FPA 1971 by

- adding 'use as a place of work' to the list of uses in respect of which the Secretary of State might make designating Orders under FPA 1971; and
- precluding the Secretary of State from using FPA 1971 to provide for special precautions connected with the carrying on of any manufacturing process (that is *process fire precautions*).

12. For *dangerous materials and processes*, HSWA provided for control and enforcement through regulations. For *major hazards premises*, the Committee's recommendations were taken forward by the introduction of the FC (SP) Regulations using the regulation-making power provided by Section 15 of HSWA.

13. On 1 January 1977 the fire precautions sections of the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963 were repealed and this work became the responsibility of the fire authorities. This was intended to be the start of a rationalisation of fire safety law, but in the event it was not taken forward. Fire precautions protection was not extended to other places of work, nor was the substance of the requirements altered.

### The Bickerdike Allen Review

14. As part of the Government's initiative to reduce the burdens on business, Bickerdike Allen Partners were commissioned in 1989 to review the inter-relation of the Building Regulations and fire certification requirements of the FPA 1971 and to examine the way in which they operate in practice. The terms of reference of the review are at Annex C. The report of the review published in 1990 made recommendations designed to lead to the more efficient administration of fire safety related legislation. A copy of the review's recommendations are at Annex D.

15. As a direct result of the review, the DOE, the HO and the Welsh Office issued in June 1992 procedural guidance on Building Regulations and fire safety. This was intended to assist designers, developers and occupiers of buildings to understand the steps involved in obtaining approval for the fire safety aspects of building work, and the interaction between Building Regulations and other fire safety requirements.

16. The report also led to the establishment of the national core curriculum in fire safety studies for those involved in fire and building regulation and design. The national core curriculum was intended to meet criticism that the levels of knowledge and education of BCOs, FPOs and building designers in matters of fire safety and design were not uniformly of a high standard, and that the three groups do not always share a common understanding of fire safety matters.

## The Appleton Inquiry Report

17. Following a number of incidents on London Underground and British Rail, the HSE asked Dr Brian Appleton to look at stoppages caused by fire and bomb alerts on London Underground, British Rail and other mass transit systems. The report of the inquiry, published in 1992, noted that there had been a reduction in fire risk, and recommended that fire precautions should no longer command a disproportionate share of the resources of London Underground Ltd, and that fire risk should be considered as one of a number of risks on the Underground. The report argued that fire precautions should be based upon a quantified assessment of actual risks and that precautions taken to mitigate fire risk should be based on the result of quantified risk assessment of all the risks facing an operator.

## Efficiency Scrutiny of the Implementation of EC Legislation in the UK

18. In October 1992 an Efficiency Scrutiny was established to review the implementation and enforcement of EC law in the UK. One of its case studies was the implementation of the fire safety provisions in the EC Framework and Workplace directives adopted in 1989 (see paragraph 57 below). In commenting on the problems which had resulted from the way in which the HO had sought to implement the fire safety requirements of the directives, the scrutiny noted that the complex legal framework created serious problems, particularly that of overlap with existing controls.

19. The Scrutiny also noted that there was no major dissatisfaction with the enforcement of current fire safety law, but considered that there was scope for some improvements in appeal procedures and liaison with 'users'.

## Construction Task Force

20. During 1993 the Department of Trade and Industry established 7 task forces which were specifically set up to look at regulatory issues from the business point of view. One of these, the Construction Task Force, made a number of recommendations relating to fire safety in buildings under construction and in use which were endorsed by the other task forces. An abstract of the relevant recommendations including other task forces' recommendations relevant to this review is at Annex E.

## Home Office Review of the Fire Precautions Act 1971

21. The HO has been concerned for some time that whatever the success of the 1971 Act, it has proved to be too inflexible in its operation. This was the view of the Act taken by the 1980 Home Office *Review of fire policy - an examination of the deployment of resources to combat fire* - and of the later Home Office consultative

document *A review of the Fire Precautions Act 1971*. In July 1993 the HO established the review of the 1971 Act referred to in our terms of reference.

22. More recently the National Audit Office report *Fire Precautions in England and Wales* published in 1992, the *52nd Report of the Committee of Public Accounts* published in 1993 and the 1993 Efficiency Scrutiny report described above all added to concern about the operation of the FPA 1971 Act.

23. The first phase of the 1993 Home Office review, completed in December 1993, examined the operation and effectiveness of the FPA 1971 and related issues. It had been intended that the second phase would consider such issues as overlap and duplication with the Building Regulations, the possibility of making fire safety matters the responsibility of one Department, the feasibility of a one-stop shop for fire safety approvals, and the question of the body or bodies that should enforce fire safety legislation. The work of the construction task force, however, prompted a decision to carry out a wider scrutiny which would subsume all these issues. This, the current scrutiny, is an interdepartmental review of the enforcement of all fire provisions in legislation for which the HO, DOE and the HSE have policy responsibility.

## CURRENT LEGISLATIVE POSITION

24. Having briefly set out the history we now set out a description of the main fire safety legislation currently in force in England and Wales. Other legislation with particular fire safety provisions is listed in Annexes F, G and H. The position is summarised graphically in Diagram 1.

### Fire Precautions Act 1971

25. The FPA 1971 is concerned with human life fire safety in *certain classes of premises put to particular uses*. The Act was the first piece of legislation devoted exclusively to fire safety in occupied premises and was intended to provide a legislative vehicle for consolidating fire provisions in many other pieces of legislation.

26. The FPA 1971 requires all premises used for purposes designated by the Home Secretary to have a *fire certificate* unless exempt. The intention was that in time designation should be extended to cover all types of premises where people are employed or to which they are likely to resort (other than single domestic dwellings). So far two designation orders have been made covering:

- hotels and boarding houses which provide sleeping accommodation for more than 6 people or which provide such accommodation above the first floor or below the ground floor;

- factories, offices, shops and railway premises where more than 20 persons are at work at any one time, or where more than 10 persons work above or below the ground floor; and where explosives or highly flammable materials are used or stored.

Fire certificates are issued by the local fire authority (county councils or metropolitan fire authorities) but in practice inspection and assessment is delegated to fire brigades. Different arrangements exist for Crown premises.

27. Fire certificates are required to specify:

- the use or uses of the premises covered;
- the means of escape in case of fire;
- how means of escape can be safely and effectively used;
- the alarms and other systems for giving warning in case of fire;
- the means for firefighting with which the building is provided.

In addition, the fire authority may, at its discretion, impose requirements including:

- maintenance of means of escape and fire fighting equipment and other fire precautions matters;
- staff training;
- limitations on the number of people within the premises.

28. Premises which are put to a designated use but which, for one reason or another, are exempt from fire certification, are covered by section 9A of the FPA 1971. Occupiers of such premises are required to provide such means of escape in case of fire and such means of fighting fire *as may reasonably be required in the circumstances*. A statutory code of practice has been issued in relation to this duty.<sup>2</sup> On account of how the law has taken shape, the premises currently controlled under Section 9A are mainly small offices, shops and factories.

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<sup>2</sup> Code of Practice for Fire Precautions in Factories, Offices, Shops and Railway Premises not required to have a Fire Certificate.

29. The FPA 1971 does not cover all workplaces because *its definition of 'premises' is restricted to buildings*. The Act does contain provision for the making of regulations applying any of its provisions, suitably modified, to moored vessels, tents, other movable structures and/or open air workplaces, but no such regulations have been made.

30. The FPA 1971 contains regulation-making powers which can be used to cover specific cases. These enabled, for example, regulations on underground railway systems to be made following the King's Cross fire.

31. The FPA 1971 provides a *right of appeal to a Magistrates' Court* for any person aggrieved by a decision relating to fire certification, improvement and prohibition notices.

### Fire Safety and Safety of Places of Sport Act 1987

32. The Act amended the FPA 1971 so as, *inter alia*, to enable a fire authority to exempt certain 'low risk' premises from the requirement to have a fire certificate. Section 3 of the 1987 Act also made provision for the first time for charges to be made by fire authorities to recover the cost of issuing and amending fire certificates.

33. The 1987 Act also gives fire authorities the power to serve

- *improvement notices* on occupiers of premises which do not comply with Section 9A of FPA 1971; and
- *prohibition notices* on occupiers of any premises which are used for a designatable purpose (whether or not the use has actually been designated) where there is a serious fire risk. Such a notice prohibits or restricts the use of the premises until the fire risk has been remedied.

### Fire Services Act 1947

34. The FSA places a general duty on fire authorities to make provision for fire fighting purposes, and particular duties including those to make efficient arrangements for:

- obtaining, by inspection or otherwise, information required for fire-fighting purposes with respect to the character of the buildings and other property - Section 1(1)(d);
- ensuring that reasonable steps are taken to prevent or mitigate damage to property resulting from measures taken in dealing with fires - section 1(1)(e);

- the giving, when requested, of advice on such matters as fire prevention, the restriction of the spread of fire and the means of escape in the event of fire - section 1(1)(f).

35. The FSA gives fire authorities a number of powers relating to fire brigade accommodation and equipment, the employment of fire brigades and the use of equipment for suitable purposes other than fire fighting, special service calls and the provision and maintenance of alarms in streets or public places as fire authorities think proper.

#### Building Act 1984

36. The Act is concerned with building control in new and altered premises; and Section 1 provides the Secretary of State with powers to make regulations for any purposes of

- securing the health, safety, welfare and convenience of persons in or about buildings and others who may be affected by buildings or matters concerned with building;
- furthering the conservation of fuel and power; and
- preventing waste, undue consumption, misuse or contamination of water.

37. The Building Regulations 1991 were made under this section and are discussed in detail below. Other sections of the Act of relevance to this review are:

- Section 2, which allows for Building Regulations to impose on owners and occupiers continuing requirements;
- Section 3, which allows for Building Regulations to exempt a prescribed class of building, services, fittings or equipment from any or all of its provisions;
- Section 4, which exempts schools maintained by local education authorities and grant-maintained schools from the Building Regulations. However, education authorities and governing bodies of such premises must comply with the Education (School Premises) Regulations 1981;
- Section 6, which provides for the Secretary of State to approve documents for the purposes of the Building Regulations;

- Section 14, which provides for the appointment of the Building Regulations Advisory Committee. The Secretary of State must consult this committee before making any Building Regulations containing substantive requirements;
- Section 15, which requires the building control authority to consult the fire authority before passing the plans, if they relate to:
  - an erection, extension or structural alteration to a building which is likely to be put to a use designated under the FPA 1971;
  - a proposed change of use of a building to one which is likely to be a designated use under the FPA 1971; or
  - a building where the building control authority intends to dispense with a provision of Part B, which deals with fire safety, in response to a request from the applicant.
- Sections 16 and 39-43, which make provision for determinations and appeals respectively. An applicant is entitled to appeal to the Secretary of State, within a time limit, if an application to relax or dispense with the requirements of the Building Regulations is refused by the building control authority; or he may seek a determination by the Secretary of State, before the proposed work is carried out, on any question, or dispute with the authority, as to whether the work complies with the regulations;
- Section 35, which makes it an offence to contravene the requirements of the Building Regulations;
- Section 36, which provides local authorities with powers to remedy such contraventions;
- Section 49, which makes provision for approved inspectors;
- Section 71, which gives a local authority, after consultation with the fire authority, power to issue a notice requiring works or other action to the owner of a building if it has unsatisfactory means of ingress and egress, passages or gangways, taking into account the use of the building and the number of people likely to be in it at any one time;

- Section 72, which enables the local authority, after consultation with the fire authority, to require means of escape from high premises put to certain uses in which the floor of any upper storey is more than 20 feet above street level.

## Building Regulations 1991

38. The Regulations govern certain aspects of building design and construction in the interest of public health and safety, conservation of fuel and power and making buildings accessible to disabled people. The Regulations are expressed in functional terms and are supported by separate documents containing practical and technical guidance on compliance, which are known as 'Approved Documents'. These are produced in several parts each relating to different parts of the Regulations for example, Part A (Structure), Part B (fire safety), Part M (access and facilities for disabled people). Designers or builders are not obliged to use the Approved Documents so long as they can prove that the requirements have been met in some other way.

39. The Regulations apply, in general

- to most new buildings including dwellings but not certain schools or buildings exempt by Regulation 9 (eg temporary buildings, greenhouses and agricultural buildings);
- where there is a material change of use;
- where there is a material alteration which includes work which would adversely affect the structure, the means of escape or fire spread within or outside the building.

40. The Regulations contain specific requirements relating to fire, in particular:

- provision of means of escape (approved document B1);
- structural fire protection of buildings, including measures to restrict fire spread within and between buildings and to prevent premature failure of the structure of the building in a fire (Approved Document, Parts B2, B3 and B4);
- access and facilities for the Fire Service (Approved Document, Part B5).

## Health and Safety at Work etc Act 1974

41. Almost all the risks to health and safety arising from work activity in the UK are regulated through a *single legal framework*, the Health and Safety at Work etc Act 1974; and a single set of institutions, the Health and Safety Commission and its Executive. The regulatory responsibilities of HSC/E include the health and safety of *both workers and the public* who may be affected by nuclear installations, mines, factories, farms, hospitals, schools, hotels, leisure centres, construction sites, offshore oil and gas installations etc, the safety of the gas grid and the movement of dangerous goods and substances as well as railway safety.

42. The purposes of HSWA are set out in Part I of the Act itself and are as follows:

- securing the health, safety and welfare of people at work
- protecting people other than those at work against risks to their health and safety arising out of work activities
- controlling the keeping and use of explosives or highly flammable or otherwise damaging substances and generally preventing people from unlawfully acquiring and using such substances.

The scope of Part I has been extended to all premises *including domestic premises where the risk arises from the transmission, distribution, supply and use of gas.*

43. HSWA is superimposed on earlier related Acts and regulations (known as *relevant statutory provisions*). These include the Petroleum Consolidation Act 1928, the Factories Act 1961, and the Offices, Shops and Railway Premises Act 1963. Although many of these earlier Acts and regulations remain in force, an objective of HSWA (Section 1(2)) is progressively to replace them with a system of regulation and approved codes of practice which revise and update the earlier requirements. However, this progressive replacement by Regulations and Codes operating in combination with HSWA *must be designed to maintain or improve existing standards.*

44. The Act places general duties on a range of people from employers, self-employed and employees to people in control of premises:

- Section 2, places a duty on employers to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all their employees;
- Section 3(1) places a duty on every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety;
- Section 3(2) places a duty on every self-employed person to conduct his undertaking in such a way as to ensure so far as is reasonably practicable, that he and other persons (not being his employees) who may be

affected thereby are not thereby exposed to risks to their health or safety;

- Section 4 places duties on anyone who has control to any extent of non-domestic premises used by people who are not their employees to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

45. In some areas the general duties are supplemented by specific requirements laid down in Regulations under the Act, for example, the FC (SP) Regulations or in earlier health and safety legislation which is still in force, for example, the Petroleum Consolidation Act 1928.

46. The meaning of 'undertaking' is very wide and not limited to the carrying out of an industrial process. It also covers, for example, trading and supplying or selling to customers and provision of services. Risks arising out of, or in connection with, the activities of persons at work include risks attributable to the:

- manner of conducting an undertaking
- plant or substances used
- condition of premises used.

47. Section 11 sets out the general functions of the Commission and the Executive. The Commission's duties include promoting the objectives of the Act, carrying out and encouraging research and training, providing an information and advisory service, and putting forward to Ministers proposals for Regulations under the Act. The Executive's duties include making arrangements for enforcement of the legislation and the carrying out any of the Commission's functions which the Commission asks the Executive to take on. In practice, the Executive and its staff act for the Commission in carrying out the day to day work necessary to enable the Commission to perform its functions.

48. Section 15 provides Ministers with regulation-making powers. The HSC submits to the appropriate Government Minister (determined by the subject of the proposed Regulations) proposals for regulations as it thinks necessary. Before submitting proposals the Commission are statutorily bound to consult such government departments, local authorities and other bodies as they consider appropriate (section 50), and normally proposals are published in the form of a consultative document.

49. Section 16 enables the HSC to issue Approved Codes of Practice but before doing so the Commission must obtain the consent of the appropriate Government Minister and undertake the consultation required by Section 50. Approved codes have a special standing in that those who depart from them must be prepared to show that their approach is an equally valid way of meeting the legal requirement. In this way flexibility is allowed for technological development, within a framework set by mandatory regulation.

50. Inspectors appointed under the Act have wide-ranging powers including the authority to issue *improvement and prohibition notices* (Sections 21 & 22). A person on whom a notice is served may *appeal to an industrial tribunal* (Section 24).

51. A number of Acts and Regulations under the HSWA are relevant to fire safety. These include:

- The Management of Health and Safety at Work Regulations 1992 (MHSW Regulations) which implement the Framework Directive (paragraph 57) and require, for example, duty holders to
  - carry out a *risk assessment* to identify any matters which may affect the health and safety of employees or others and to identify what measures need be taken to comply with health and safety legislation;
  - appoint one or more competent persons to help in the application of identified measures;
  - establish procedures to be followed in situations presenting serious and imminent danger;
  - provide information and training.
- The Control of Industrial Major Accident Hazard Regulations 1984 which are designed to prevent major chemical industrial accidents and to limit the consequences to people and the environment of any which do occur. They apply to hazardous activities at fixed sites, defined in terms of process and storage activities involving specified dangerous substances. They embrace much of the petrochemical, chemical, and allied industries having substances with flammable, oxidising, explosive or toxic properties and also activities such as warehousing of certain substances and preparations. Users of large quantities of fuel gases also come within the scope of the regulations.

The requirements of CIMAH operate at two levels.

- general requirements on manufacturers to demonstrate at any time that they have identified the major accident hazards and that the activity is being operated safely;
- more stringent requirements (in addition to the above) applying to the potentially more hazardous activities requiring:
  - submission of a written safety report to HSE
  - preparation of an on-site emergency plan
  - provision of certain information to the public

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- local authorities to prepare and keep up-to-date an off-site emergency plan based on information provided by manufacturer.
- The Fire Certificates (Special Premises) Regulations 1976 require certification of general fire precautions along the lines of FPA 1971 but the work is done and enforced by HSE. The Robens Report of 1972 (which led to the HSWA) perceived a need for a single central authority for safety matters and for special fire regulations dealing with major hazard sites because of the link between process and general fire precautions. This led to the FC(SP) Regulations which also introduced controls on *temporary accommodation units at construction sites* because of the limited application of the FPA 1971. The FC(SP) Regulations cover the entire premises, including open air structures, whereas the FPA 1971 limits certification to buildings.
- The Petroleum Consolidation Act 1928 is a relevant statutory provision of HSWA and covers the safe keeping of petrol in relation to fire and explosion hazards. The keeping of petroleum is controlled by licences issued by Petroleum Licensing Authorities (fire authorities, harbour authorities and trading standards authorities) who have wide discretionary powers under the 1928 Act to set whatever conditions of licence they consider necessary.

Under Section 44 of HSWA any person who is aggrieved by a decision of a petroleum licensing authority in connection with a licence has a right of appeal to the Secretary of State for Employment.

- The Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972 apply when liquids with a flashpoint below 32°C are present at premises subject to the Factories Act 1961. They apply to both the storage and use of flammable liquids and gases. However, unlike the Petroleum Consolidation Act, there are no licensing requirements.

## Licensing Act 1964

52. The Act governs the granting of licences by the licensing justices for the sale of intoxicating liquor. It provides, among other things, that

- the justices may not grant a licence unless they are satisfied that the premises are structurally adapted to the class of licence required

- the justices may grant a provisional licence for new or altered premises on the deposit of plans, may approve modifications to such plans, and may grant a final licence on completion of the works in accordance with the approved plans
- before renewing a licence the justices may require the deposit of structural plans, and may require structural alterations to the premises.

Other legislation (included in Annex F) covers the licensing of other premises, eg cinemas, theatres and other places of public entertainment.

### Housing Act 1985

53. Part XI of the Housing Act 1985 deals with houses in multiple occupation and makes provisions with respect to fire precautions and means of escape. A house in multiple occupation is defined in section 345 of the Act as

*'a house which is occupied by persons who do not form a single household'.*

Such houses are not designated for the purposes of the FPA 1971. The HA provides local authorities with a discretionary power to take action if an HMO is not provided with adequate means of escape in case of fire. The powers available to local authorities include the service of notices specifying works required to provide the necessary means of escape, and notices specifying that part of the premises are not to be used for human habitation. Before taking action relating to means of escape under the HA, the local authority is required to consult the fire authority. Although the powers are discretionary the local authority must take action if the HMO is of three storeys or more, and its floor area exceeds 500 square metres (this is because such premises have been specified in a Order made by the Secretary of State). Local authorities also have power to execute the necessary works themselves.

### Local Acts

54. A considerable number of local Acts contain provisions which relate to fire precautions. These are listed in Annex H. The powers broadly fall into a number of categories, the main ones being means of escape provisions, provisions for fire brigade access, and fire precautions in certain types of premises, (including large or high buildings.)

55. The current legislative framework is shown graphically in Diagram 1.

## Scotland

56. In the time available to us we have not been able to examine in detail the implications for Scotland of our conclusions and recommendations. The Scottish Office will therefore wish to consider the implications of our proposals for the Scottish system. The legislative position in Scotland is set out in Annex B.

### Fire provisions of EC directives

57. Fire safety provisions are included in two of the package of six Health and Safety Directives adopted in 1989 - the Framework Directive and the Workplace Directive. The former contains several specific references to general fire precautions. For example it requires employers to:

- take 'the necessary measures' for fire-fighting and evacuation of workers 'adapted to the nature of the activities and the size of the undertaking and/or establishment and taking into account other persons present.'
- arrange any necessary contacts with external services, including fire-fighting services;
- designate an adequate number of workers to implement fire-fighting and evacuation measures, and provide them with adequate training and equipment.

58. In addition, the Framework Directive contains a number of general provision *which in principle embrace fire safety*. For example, employers are required to:

- be in possession of an assessment of risks to safety and health at work;
- decide on the protective measures to be taken;
- arrange adequate safety and health training for all employees.

59. Similarly, the Workplace Directive sets a number of minimum health requirements of workplaces, which include fire precautions (eg provisions on emergency routes and exits, emergency lighting, fire-fighting equipment).

60. The lead for carrying these two Directives into UK law was split between HSE and the Home Departments reflecting the current division of Departmental responsibilities. This has led to separate consultative exercises which in turn has resulted in different dates of implementation.

61. Most of the directives' provisions have been implemented by MHSW Regulations made under Section 15 of HSWA which took effect on 1 January 1993.

62. However, the structure of the existing fire precautions law has created serious implementation problems for the HO with respect to general fire precautions. The Home Departments decided in 1991 to implement the directives by making regulations under Section 12 of the FPA 1971. Draft regulations, the Fire Precautions (Places of Work) Regulations and associated technical guidance were prepared and issued for consultation in May 1992. The former Home Secretary decided, however, that the regulations should not take effect on 1 January 1993 as originally planned following criticism of the proposals.

63. The draft regulations and technical guidance have been revised to simplify them and reduce the potential burdens on businesses and fire authorities and are scheduled for full public consultation in the summer. It is proposed that the regulations will come into force on 1 April 1995 although certain specific regulations will not apply until 1 April 1998.

64. The application of the proposed Regulations will be limited by the definition of 'premises' in the FPA 1971 as a building or part of a building. It follows that the proposed regulations will not apply, at this stage, to moored vessels, tents and other movable structures and places of work in the open air eg construction sites. *Alternative arrangements will need to be made for the implementation of the requirements of the Directives at such places of work.*

65. Other health and safety directives, containing fire safety requirements, still to be implemented include:

- the safety signs directive
- the temporary or mobile construction sites directive
- the mineral extractive industries directive (onshore) - the offshore aspects (both process and general fire precautions) are to be implemented by the proposed Offshore Installations (Prevention of Fire and Explosion and Emergency Response) Regulations to be made under HSWA.

66. Although an integrated approach was not adopted for the implementation of the Framework and Workplace Directives, both HO and HSE recognise the desirability of avoiding two sets of regulations if one would do. A recent consultation document published by the HSC setting out proposals to implement the Safety Signs Directive outlines the options available to HO and HSC concerning the implementation of the fire safety aspects of the Directive. These are summarised in Annex I.

## Current enforcement responsibilities

67. The various authorities involved in the enforcement of the legislation relating to fire safety are listed in Annex J. Particular aspects of enforcement are discussed below.

### **Building Regulations and the Fire Precautions Act**

68. Building Regulations made under the Building Act 1984 deal with a number of fire related matters. (BCOs may also be responsible for enforcing the budding provisions in local Acts which may also have fire safety requirements.) Building Regulations cover structural fire precautions eg the fire resistance of walls, means of escape in case of fire, and access and facilities for the Fire Service.

69. Fire precautions matters covered by the certification process under the FPA 1971 include requirements for securing the safe use of the means of escape, the installation of fire warning systems, and means of fighting fire; and may include, requirements relating to the training of staff members and the maintenance of the means of escape and any other fire precaution related matters set out in the certificate.

70. Problems between the operation of the building control and fire certification process can occur where building control has approved a means of escape which the fire authority considers inadequate or inappropriate. This can cause problems in relation to the operation of Section 13 of the FPA 1971, commonly known as the statutory bar, which, with certain exceptions, prohibits fire authorities in England and Wales from requiring changes or improvements in means of escape in premises being certificated where the building was subject to Building Regulations as to means of escape when it was built. Problems may also occur where a fire authority's requirements for securing the safe use of the means of escape or the fitting of fire warning systems result in building work being required.

71. Tensions have also resulted from the introduction of the Procedural Guidance introduced following the report of Bickerdike Allen Partners (paragraph 15). Under the Guidance fire authorities should direct queries about fire matters relating to a building during construction to the building control authority. However, fire authorities still retain a duty to give free advice under section 1(1)(f) of the FSA (paragraph 34), and there may be a conflict between advice given by a fire authority and the fire safety standards which a building control authority can require under Building Regulations.

72. There can also be problems when fire authorities, in offering comments as part of the consultation, do not make clear

- which points will be required to be satisfied for the purposes of certification, and
- which points are merely advisory.

If the building control authority does not pass on the fire authority's comments, the applicant may be faced with a need to carry out further work to obtain a fire certificate. If the building control authority does pass on the comments, and it is not clear which are mandatory and which merely advisory, the applicant may carry out works which are not required under the regulatory regimes.

### Building Regulations, the Housing Act and Local Acts

73. Environmental Health Officers are responsible under the Housing Act 1985 and Local Government and Housing Act 1989 for enforcing legislation relating to HMOs. EHOs are concerned about the general fitness of HMOs, including working facilities, and sanitation. Their responsibilities also cover fire precautions, in particular the adequacy of means of escape and other fire precautions in HMOs.

74. In considering the fitness of HMOs, EHOs need to take a view of the premises as a whole. Many HMOs have low standards of fitness, but they are regarded by Government and local authorities as an important source of accommodation at the cheaper end of the market. Consequently, we were told, EHOs will weigh up many factors when considering likely enforcement action for whatever reason, especially if those in the HMO concerned might be made homeless as a result of that action.

75. Because of the wide definition of a HMO (paragraph 53), premises which are subject to the certification requirements of the FPA 1971 enforced by fire authorities may also be regarded as an HMO subject to the provisions of the HA and regulations made under it. Specific guidance on fire safety in HMOs is set out in DOE Circular 12/92. The standards in it differ from those in centrally produced guidance applied by fire authorities to designated premises. This can lead to friction between the enforcing bodies and confusion for the owners of the premises. We saw evidence of this during one of our visits. A building which had been certificated for many years under the FPA 1971 as a hotel was classified as an HMO by the local environmental health department as a matter of policy. This was because 25% of the residents were DSS benefit recipients. As a result, and although the fire authority believed the fire precautions to be generally satisfactory, the environmental health department have served a notice to carry out improvements on the owner. The owner, on the advice of the fire authority, had already agreed a programme of improvements to existing fire precautions to be implemented over a period of time.

76. However, we have seen evidence that, by and large, EHOs and fire officers work together closely and effectively in relation to fire matters in premises considered to be HMOs not subject to non-housing legislation. Indeed in some areas, the fire authority acts as the paid agent of the environmental health department in respect of fire precautions in HMOs.

77. We did receive some evidence that EHOs sometimes request fire officers to use their prohibition powers under section 10 of the FPA 1971 to close individual HMOs of particular concern. This enables action to be taken more quickly, and may also be seen by local authorities as preferable to taking closure action on their own account.

### Mixing and matching

78. One feature which the current system allows is the use of different statutory powers to enable the local authority to achieve the desired result. Some local authorities are able to tackle different types of property under the FPA 1971, the HA and local Acts. We saw examples of properties which appeared, on the face of it, to be HMOs not classified as such by the local authority, who elected to use local Act powers instead (thereby, incidentally, avoiding their duty to make improvement grants under the grant powers of the HA). Other properties which did not appear to meet the definition of an HMO were, however, classified as such in order to enable more stringent requirements to be met. The ability to mix and match will depend on the extent of the local powers available to an authority, but we regard it as undesirable in principle that the choice should exist. Fire safety standards should be of universal application.

### HSWA and the Fire Precautions Act

79. The prime responsibility for checking *general fire precautions* rests with the fire authority under the FPA 1971 whether or not the particular class of premises has been designated under the Act as requiring a certificate. In some cases, however, other enforcing authorities may have responsibilities for general fire precautions under more specific measures. For example, HSE is responsible for issuing fire certificates relating to general fire precautions in premises subject to the FC(SP) Regulations.

80. Responsibility for checking *process fire precautions* and precautions in connection with the keeping and use of explosives or highly flammable substances in connection with legislation made under HSWA or the existing statutory provisions rests with HSE or other enforcing authorities under the Health and Safety (Enforcing Authority) Regulations.

81. The terms 'general fire precautions' and 'process fire precautions' are not legally defined. In practice, general fire precautions are usually matters that reduce the risk to life in the event of fire. For example,

- maintenance of the means of escape
- means of securing that at all material times the means of escape can be effectively used
- means for giving warning in case of fire.

82. Process fire precautions on the other hand are normally those precautions that place some form of control on the hazardous process or work activity in order to prevent the outbreak of a fire or to reduce the spread of fire with the aim of allowing people to reach safety, for example,

- preventing or minimising the risk of ignition.
- minimising the initial size and spread of any potential fire so as to prevent injury etc by adequate house-keeping, control of stock and storage arrangements.

83. In view of the very broad terms of the HSWA, inspectors enforcing it can be regarded as having authority to deal with all aspects of safety. Since HSWA overlaps with other legislation, in particular the FPA 1971, for which fire authorities are responsible, there will inevitably be a degree of overlap of responsibilities for fire safety. HSE and the HO have therefore established a clear understanding of the demarcation of responsibilities; and at local level links have been established between HSE area offices and fire authorities to ensure exchange of information. Liaison between inspection and fire authorities is necessary:

- when inspectors enforcing one regime become aware of deficiencies in the area of the other which are matters of evident concern;
- when the issue of a prohibition notice or improvement notice which might affect general fire precautions is being considered by an inspector enforcing HSWA;
- to meet requirements for consultation as required by legislation, particularly HSWA section 23(4) and FPA 1971 section 17(1);

- where premises subject to the FC (SP) Regulations are situated within premises requiring a fire certificate under the FPA 1971 eg explosives magazines in premises other than a licensed explosives factory.

## HSWA and Building Regulations

84. Section 23(3) of HSWA provides that an inspector cannot specify in an improvement notice remedial measures that would require the person concerned to do more to his premises (or fittings in them) than he would be required to do if the premises were being built now in accordance with current Building Regulations. This 'statutory bar' does not apply to health and safety provisions cited in a notice imposing specific requirements relating to matters which go beyond current Building Regulations standards or are not controlled by Building Regulations.

85. The provision is intended to prevent two sets of standards being imposed in respect of the same matter. It recognises however, that health and safety regulations may contain requirements relating to buildings used for particular activities or processes, and these may well be more onerous than the more generalised requirements of Building Regulations.

86. This subsection does not however apply the statutory bar to requirements which may be made in prohibition notices.

87. Section 23(6) provides a similar 'statutory bar' in respect of Building Regulations standards, taking into account the differences in Scottish building legislation.

88. No problems arising from the relationship between BCOs and HSE have been brought to our attention.

## THE PROBLEMS AND THE OPTIONS

### Approach to the subject

89. This scrutiny was launched following the recommendations of the Construction Task Force (paragraph 20 and Annex E). One of those recommendations was to the effect that all regulations affecting buildings should be consolidated into a single set, for which the DOE should be responsible. Fire authorities would be responsible for inspecting fire precautions as agents of DOE.

90. This recommendation effectively suggested that the Holroyd distinction (paragraph 7) was no longer appropriate. We have considered carefully whether it is time to bring about a closer link between the regulations covering fire precautions in new and altered buildings and those in buildings in use.

91. We discuss below (paragraph 166) the coverage of Building Regulations, and recommend that certain physical matters which are the responsibility of the fire authority should now fall within the scope of building control. But we do not consider that the Holroyd distinction can sensibly be dispensed with. This is primarily because there is more to fire safety than the physical measures installed in a building. Particularly in more modern buildings, where innovative 'fire engineering' solutions have been adopted, *management* of the fire precautions is as important as the hardware. We do not consider that the scope of building control should be extended to cover the responsibilities of building occupiers to understand, operate and maintain fire precautions, and to ensure that appropriate training and procedures are in place to address fire safety issues. As we explain below, we consider that these issues are better dealt with in the context of general health and safety legislation.

92. We are aware that section 2 of the Building Act 1984 (which has never been implemented) allows for regulations imposing continuing requirements on the owners and occupiers of buildings which have been subject to the building control process. Such regulations could, if made, cover conditions for using services, fittings or equipment provided in the building, their inspection and maintenance, and a requirement to report on their condition. Nonetheless we do not recommend that such regulations should be made to extend the scope of building control beyond the point at which the building is occupied. This is principally for the reasons given in the preceding paragraph, and the fact that placing fire risk management within the wider health and safety context would be in the spirit of the approach of the EC directives.

93. Having therefore concluded that the distinction between construction/alteration and use ought to be retained, we examine below our findings on the operation and effectiveness of the current procedures, and make recommendations on how a number of anomalies and problems can be addressed. As at any one time only a small minority of buildings will be undergoing works which require the involvement of the building control authority we take as our starting point the framework which should govern the majority - those in occupation and use.

#### The need for change

94. Previous examinations of this subject (including those by Bickerdike Allen Partners and the EC Law implementation scrutiny) found no evidence of major dissatisfaction with the current system. This scrutiny was set up, however, among other things, in response to suggestions that difficulties did arise, particularly from the relationship between building control and the provisions covering the continuing control of occupied buildings.

95. In our fact-finding visits we did find evidence of problems in this and other areas. But since our consultation letter had specifically asked for evidence of

problems, real or perceived, it is to be expected that the programmes planned for us should cover difficulties which were occurring on the ground. We accept that problems do arise, but it has not been possible for us to form any view of the *measure* of such difficulties, or how typical they are. On the other side of the coin, our fact-finding visits also revealed areas where the system worked well owing to co-operation between enforcing authorities and a willingness to make it work. Nonetheless it was clear that the best results required a certain amount of effort, and that the system provides undue scope for difficulties if that effort, for whatever reason, is not forthcoming.

96. This last view was reinforced by the overwhelming majority of those we consulted, who pointed to areas of overlap, important areas not covered by the legislation, inappropriate matching of risk and resources, fragmentation of legislation, a variety of codes and standards, and a pattern of domestic legislation which was now being overlaid with the requirements of EC directives. All looked to this scrutiny as an opportunity to introduce some simplification and rationalisation.

97. Many of those we consulted pointed to the historical background to the current fire safety legislation covering occupied premises. Much of it had been introduced following major fire disasters, and not as a consequence of any strategic review of the legislative framework. The result has been something of a patchwork of legislation and procedures and a lack of coherence. The current scrutiny has provided an opportunity for a cooler and more rational appraisal of fire safety, since, though there have been a number of serious and fatal fires during its course, these have not led to suggestions that emergency legislation is necessary.

98. The result of this appraisal is that we consider that there are gaps and overlaps in the present arrangements, and that simplification is both possible and desirable without increasing burdens or lessening levels of public or workplace safety.

#### Principles of fire safety legislation

99. Fire threatens both life and property. The term 'fire losses' covers a very wide range, including the capital value of property destroyed in fire, loss of employment arising from fires in industrial and commercial premises, and environmental damage caused by fire and firefighting activities. The current philosophy is, however, that the law is there to protect life: property protection is a matter for the individual and the insurance industry (though it goes without saying that many life safety measures will also contribute to property protection).

100. Our terms of reference do not require us to address this fundamental issue. We were asked to review the operation and effectiveness of current legislation, and we have done this in the context of its intention. We have come to the conclusion that

the general principles of fire safety adopted by the legislation are sound. These can be succinctly stated. They are that in premises covered by fire safety legislation:

- there should be adequate means of escape in case of fire
- the means of escape should be usable when needed
- there should be adequate means of detection, and means of giving adequate warning of fire
- there should be suitable means of fighting fire.

All the detailed requirements currently in force can be shown to flow from these principles. Adequate means of escape, for example, can cover arrangements such as compartmentation and fire resistance which are designed to provide *time* for people to escape.

101. Although we see no reason to question these principles we wish to make one important point about their translation into standards of fire protection in practice. Fire protection must of course, ensure the safety of those who are on the premises when fire breaks out. But they must also take into account the safety of firefighters and rescuers who have to enter the building after the outbreak of fire. In this context we note that recent changes to the building standards have been seen by some commentators as reducing the levels of safety for firefighters, for example, reductions in fire resistance standards. We consider that this aspect should be considered specifically in future discussions of national standards of fire safety.

102. While we have not examined in detail the case for property protection legislation it is clear that it is a major issue -

- insured losses in the UK from fires in property during 1993 totalled £647 million. (This figure does not include losses suffered by the Crown or by insurance underwritten at Lloyds).
- in most cases fire precautions cannot ignore property protection. Even if minimum life safety standards are met, insurance companies are likely to seek higher standards before covering premises. There is evidence that this does happen, especially since the reduction in fire resistance standards of Building Regulations Approved Document B. The insurance industry has told us that they believe the Building Regulations do not recognise the value of property preservation, and that they would like to see the regulations reviewed to give greater recognition to this aspect (with due regard also being given to the overall cost to commerce and industry).

103. This creates a problem for the owners and occupiers of premises, who may find that, having satisfied the Building Control authority and fire authority on fire matters, they may have to upgrade the agreed fire precautions to satisfy their insurers. Shopping around to find an insurer with less stringent requirements may have a price in the form of higher premiums.

#### Fire safety legislation: the general approach

104. As required by our terms of reference, we have considered the various issues in the light of the 1993 Home Office Report of the Review of the Fire Precautions Act 1971. We agree the general thrust of that Report and its conclusions and recommendations, some of which are reflected and developed in this Report. In particular, we agree that:

- the 1971 Act has been successful in its primary objective as witnessed by the comparatively low level of deaths in occupied premises controlled by the Act;
- the Act's structure and approach do not provide the most suitable means for enforcing fire safety in the future;
- a reduction in fire deaths in single domestic dwellings should be sought through non-legislative means and fire authorities should be placed under a statutory duty to promote fire safety awareness in the home;
- there is a scope for a greater degree of self-compliance with fire safety legislation relating to occupied premises;
- new legislation should follow a risk assessment approach with a general duty on owners/occupiers to ensure fire safety in their premises, with fire safety standards expressed in functional goal setting terms;
- legislation relating to fire safety in occupied premises should apply to all premises other than single domestic dwellings;
- a form of certification should be retained for higher life-risk premises;
- flexibility in enforcement will inevitably be seen in some circumstances as inconsistency in enforcement;
- fire authorities should have discretion to charge the occupiers of non-domestic premises for advice in certain circumstances;

- there should be a more user-friendly appeals system than exists under the FPA 1971;
- Crown immunity from enforcement action should be removed.

105. The approach of the FPA 1971 for certification purposes is 'opting in'. Premises are subject to its certification provisions only if they are designated by order. It was originally intended that the FPA 1971 should eventually cover all premises where fire safety legislation was appropriate. This would exclude single private dwellings, but would cover most other premises, including all those which are currently subject to HSWA. This intention has never been fully carried through<sup>3</sup>, with the result that there are significant types of premises which are not covered by the Act. These include schools, other places of education, hospitals, residential care homes, houses in multiple occupation and (so far as the enforcement provisions of the FPA 1971 are concerned) premises occupied by the Crown. This is not to say that these premises are unprotected. For the most part they are covered by other legislation (see Annex F), but we regard this as unsatisfactory because this fragmentation has led to different standards of fire precautions.

106. We comment in some detail below on the relationship between fire and general health and safety legislation. On this particular point, however, we regard it as an important principle that fire safety legislation should be based on an 'opting out' rather than an 'opting in' approach. By this we mean that the owners or occupiers of all premises other than single private dwellings should be subject to general fire precautions legislation unless they are specifically exempted. This would ensure that the onus of justifying a change to the *status quo* (which, because of the administrative and legislative implications, is often the more difficult option) would fall on those who wished to remove particular types of premises from the protection of general fire legislation.

### Meaning of premises

107. Gaps arise in the coverage of the FPA 1971 and Building Regulations because of the definition of premises used in those provisions. This means that a number of places are currently outside the scope of specific fire safety legislation even though they are resorted to by the public, and where there is a life risk if fire were to occur. These include moored boats used as restaurants, tents and marquees, buildings under construction, open-air workplaces, fairground rides and certain warehouses. The Building Regulations do not apply to Crown premises and certain schools; and some buildings (eg temporary structures, greenhouses and agricultural buildings) are exempt.

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<sup>3</sup> The 1993 review identified as one reason for this an increase in the backlog of certificate applications in respect of the premises which were already designated.

108. We consider it important that in any new system of fire safety legislation these anomalies should not arise. The definition of the places covered by the legislation must therefore be wide enough to include them. Our main recommendation (see paragraph 124) for premises in use is that legislation should be modelled on HSWA. This should ensure the necessary width of coverage, since that Act applies to all undertakings, including industrial processes, trading and supply/sale to customers, service provision etc. It includes all those premises mentioned in paragraph 105 above. The only specific exclusions from the coverage of HSWA are risks in domestic premises, though they can be included in two specific circumstances:

- where safety can be affected by an undertaking (such as the landlord's business activities in rented property); and
- where the risk arises from the transmission, distribution supply or use of gas.

#### The nature of certification under the Fire Precautions Act

109. The main feature of control under the FPA 1971 is certification of designated premises. Broadly, where designated premises are to be occupied, an application for a certificate must be made to the fire authority, who have a duty to inspect the premises, and to set out in the certificate certain requirements. There is then a duty on the occupier of the premises to maintain the precautions specified in the certificate. Failure to maintain the precautions may lead to enforcement action, which can, in certain circumstances, include an order closing the building.

110. We consider that certification on this model has a number of disadvantages:

- it undermines the responsibility of the owner of premises to provide and maintain a safe environment. The preparation of the fire certificate is the responsibility of the fire authority, and the occupier therefore has no 'ownership' of its contents. The system can result in occupiers not having a sound understanding of the principles behind the precautions they are being asked to maintain (though we recognise that in practice fire officers will often explain why certain precautions are important);
- there is no provision for the updating of certificates in response to new technology or innovations. This means that, provided the precautions in the certificate are maintained as specified, the position is effectively frozen at the state of knowledge and technology applying at the time of its issue. Alterations to the premises may result in a requirement to update those precautions *which are directly affected by the work*; but there is otherwise no mechanism for insisting on up-to-date precautions where it would be reasonable to do so. Precautions in a hotel certifi-

cated in, say, 1974 will have to be accepted as being adequate today, even though it might be reasonable to require some upgrading 20 years on;

- certification can distort the priorities of fire authorities, leading to a mismatch of risk and resources. Amendments to the FPA 1971 in 1987 allowed certain premises within designated classes to be exempt, but this power appears not to have been widely used<sup>4</sup>. For the most part, if a building falls within a designated class the full certification requirements apply. Even with modern information technology (including computer aided design and word processing) a certificate can be a long and complex document. Within the designated classes are premises which cannot, on the evidence available to us, be regarded as higher life-risk (eg most office buildings and wet industrial processes). Without individual exemption, however, there is no way of short-circuiting the certification procedures for them;
- The required fire safety standards have to be met in full before a certificate will be issued. As a result, an application may be outstanding for a long time before issue, especially if the building in question undergoes change/alteration while the application is under consideration.

#### Fire and other aspects of health and safety

111. The current legislative framework, and distribution of enforcement responsibilities, reflects the fact that general fire precautions are treated differently from other aspects of health and safety in the workplace.

112. The approach adopted by HSWA has three major distinctive features when compared with that of the FPA 1971:

- a fundamental principle of HSWA is that responsibility for health and safety lies with those who own, manage and work in industrial and commercial undertakings. This includes self-employed persons. They are required to *assess the risks* associated with their activities and take appropriate action to safeguard themselves and others affected by their work;
- the Act and, wherever possible, regulations made under it, express *goals and principles to be achieved* with detail placed in codes and guidance;

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<sup>4</sup> See paragraph 66 of the 1993 Home Office review for a discussion of why this is so.

- its width of coverage (paragraph 108).

With these differences in mind, we have considered whether general fire precautions could be placed under HSWA, and whether it would be sensible to do so.

113. Although HSWA was enacted after the FPA 1971 it did not supersede it. The decision to treat general fire precautions separately from the main body of health and safety legislation was an intentional act of policy. Although we are aware that some doubt has been expressed about whether the scope of HSWA is wide enough to cover general fire precautions, we see little reason to doubt that it does. However, *as a matter of administrative practice it has not generally been applied to this area*. The following all provide evidence that its scope is wide enough to cover general fire precautions:

- there are no restrictions upon the regulation by HSE of any aspect of fire in any circumstances to which the provisions of the Act extend. In particular, the reference to 'risks to health and safety' in sections 2 and 3 (paragraph 44) are not qualified in any way;
- section 78 of HSWA widens the scope of FPA 1971 without prejudicing the existing powers arising from Part 1 of HSWA;
- health and safety regulations may be made specifically for
  - imposing requirements with respect to any matter affecting the conditions in which persons work, including in particular such matters as structural condition and stability of premises, the means of access to and egress from premises (Schedule 3: HSWA)
  - requiring in specific circumstances the taking of specified precautions in connection with the risk of fire (Schedule 3: HSWA);
- the FC (SP) Regulations 1976 were made under the Act;
- section 23(4) requires an HSE Inspector to consult with the fire authority before issuing an enforcement notice affecting means of escape; and
- the current proposal to make the Offshore Installations (Prevention of Fire and Explosion and Emergency Response) Regulations under section 15 of the Act.

114. Notwithstanding the general administrative division between general fire precautions and other types of risk, HSWA is used to regulate fire hazards, namely those termed *process fire precautions* (paragraph 10). These are precautions required to control *hazardous processes or work activities* in order to prevent the outbreak of a fire or to reduce its spread so that people, including the public, can reach a place of safety. They will be concerned with preventing or minimising the risk of ignition, and seeking to ensure that the initial size and spread of any fire which does break out is minimised.

115. We have therefore concluded that general fire precautions, process fire precautions and other aspects of health and safety could be brought within the same legislative framework. We now go on to consider whether to do so would be necessary or helpful. We have concluded that there are several reasons why this change should now be made.

116. Process fire precautions will often overlap with the general fire precautions which are the subject of fire certification under the FPA 1971. HSE and the HO have therefore established an understanding on demarcation of responsibilities, and at local level links have been set up between HSE area offices and fire authorities to ensure that information gained during inspections is exchanged. These arrangements appear to work well.

117. Under health and safety legislation employers and the self-employed are already required to assess the risks to workers and any others who may be affected by their undertaking. We consider it artificial to attempt to 'ring-fence' fire risks from such assessments. We have found evidence that treating different risks separately can cause confusion or more importantly can lead to a distortion of priorities creating unhelpful conflicts and tensions in the overall management of risks. For example.

- we visited a large outdoor chemical complex where the major risk was not fire, but the escape of toxic substances. The precautions included alarm call points for use in an emergency. The strict application of fire safety standards required these to be labelled 'FIRE ALARM'. But since fire was unlikely to be a reason for their use 'EMERGENCY ALARM' would have been a better description.
- on the London Underground, following the King's Cross fire, considerable resources were directed at fire precautions. This has pre-empted remedial action directed at other risks, such as collisions.

118. We are also concerned that a fragmented approach to the assessment of risk might lead, in some circumstances, to measures being taken which could be dangerous. The interplay between one risk and another and the appropriateness of precautions demands understanding of the full range of activities and consequences in

the premises. For example, a substance may be flammable but also explosive and toxic. It makes no sense to consider the fire risk in isolation from others since doing so could, for example, lead to persons being evacuated from their workplace when in fact the most appropriate course of action would be for them to remain within the building.

119. In our view these considerations illustrate the advantages of a more integrated approach to risk assessment which would allow precautions and resources to reflect more closely the actual hazards present on particular premises.

#### Better implementation of EC directives

120. There is another reason why we consider the time is now right to bring general fire precautions within the same framework as other aspects of health and safety. The UK is currently engaged in implementing a set of European Community directives on health and safety. The current intention is that the directives should be implemented through two separate streams of domestic legislation, maintaining the separate treatment of general fire precautions. For example, the general health and safety aspects of the Framework and Workplace directives have already been implemented by the MHSW Regulations. The Home Departments are now consulting on a revised draft of the Fire Precautions (Places of Work) Regulations which will implement some, though not all, of the general fire precautions aspects of those directives. It is proposed to maintain the same split in the implementation of three further directives (paragraph 65).

121. This split in the implementation was noted as a matter for concern by the Scrutiny of the Implementation and Enforcement of EC Law in the UK, which recommended (recommendation 91) that

*'the risk assessment required by regulation 3 of the Management of Health and Safety at Work Regulations should be extended to cover general fire safety; and that section 2(2) of the European Communities Act 1972 should be used to designate fire authorities as the enforcing agency.'*

122. We share the concerns expressed in the earlier scrutiny about the split in the implementation for the following reasons:

- it will introduce unnecessarily two sets of regulations where one would do
- it runs the risk of inconsistency of approach in interpreting different requirements of the same directive

- it will require owners and occupiers of premises to carry out two risk assessments instead of one, perpetuating the possibility of contradictory results discussed in paragraph 117 above.

123. We are aware that the HO, in carrying out a compliance cost analysis for the proposed Fire Precautions (Places of Work) Regulations found that many businesses said that they preferred to carry out a separate risk assessment for fire. They would, of course, still have the choice of doing so even if general fire precautions and other aspects of health and safety were included in the same regulations. Equally, the larger companies we spoke to during our fact finding visits explained that they had adopted, for some considerable time, an integrated approach to their loss control programmes which cover fire safety (both general and process fire risks), other health and safety controls and activities likely to affect the environment.

124. The considerations we have discussed above lead us to perhaps the most fundamental recommendation of this report, which is that so far as occupied premises in use are concerned, the legislative framework for general fire precautions should be regulations under the Health and Safety at Work etc Act 1974.

#### Implications of using health and safety legislation

125. The basis of the regime that we propose would be a general statutory duty on the owners and occupiers of premises to provide and maintain adequate fire precautions *so far as is reasonably practicable*. This would parallel the existing duty in HSWA on employers to ensure the health, safety and welfare of their employees and to provide and maintain a healthy and safe working environment so far as is reasonably practicable. A similar duty applies to the self employed. The imposition of duty framed in such terms would address directly the problem identified in paragraph 110 above (the freezing of fire precautions arising from the duty only to maintain the fire precautions identified in the fire certificate), because it would create a continuing obligation. It should not add to the burdens on business since most if not all premises are *already* subject to fire safety controls under either the FPA 1971 or one or more of the Acts and Regulations listed in Annex F. The proposed mechanism for introducing the general statutory duty is discussed at paragraph 157.

126. In order to meet this duty, and in accordance with the requirements of the Framework and Workplace Directives, the owners and occupiers of premises would be required to include general fire precautions in the risk assessment they are already obliged to carry out under the MHSW Regulations.

127. We recommend therefore that the Home Office should not proceed with the draft Fire Precautions (Places of Work) Regulations and should pursue the implementation of the general fire precautions aspects of EC directives through regulations made under HSWA. This recommendation is in line with the task force

recommendation 333 (Annex E). The practical and machinery of Government implications of this are discussed later in this report (paragraph 261).

128. Regulation 3(1) of the MHSW Regulations requires every employer to make a suitable and sufficient assessment of:

- (a) *the risks to the health and safety of his employees to which they are exposed whilst they are at work; and*
- (b) *the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct of his undertaking*

*for the purposes of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.*

A similar duty is placed on persons who are self-employed.

129. As with section 2 and 3 of HSWA the reference to "risk" is not qualified. We consider, therefore, that the risk assessment requirements of the Framework Directive relating to general fire precautions *may already be met* by the existing MHSW Regulations. However, the MHSW Regulations will need to be amended to implement *specific requirements of the Workplace and Framework Directives which are currently not covered*. These include requirements relating to:

- precautions relating to means of escape in the case of fire
- means for fighting fire
- means for detecting fire and for giving warning in the case of fire.

We recommend that the MHSW Regulations should be amended to implement fully the requirements of the Framework and Workplace Directives. )))

130. We understand that the MHSW Regulations may possibly, in any event, be amended in the near future to implement aspects of the Safety Signs Directive. In its recent consultative document on its proposal to implement the Directive, the HSC, in agreement with the HO, asked whether the general fire precautions aspects of the Directive should be implemented by separate legislation under the FPA 1971, or in the HSC's proposed measures to implement the main part of the Directive (paragraph 66, Annex I). A clear majority of responses were in favour of the former. Proposals are now being developed to include the general fire precautions aspects in one set of

implementing regulations, to be made under HSWA. One option of several being considered is amendment to the MHSW Regulations. This is still, however, subject to consideration by, and the agreement of, the HSC and Ministers.

131. There is one aspect of our proposal at paragraph 129 which will require further consideration. The intention was that the proposed Fire Precautions (Places of Work) Regulations would not apply to self-employed persons as this is not a requirement of the directives. However, the existing MHSW Regulations do place responsibilities on the self-employed. This does not present an insurmountable problem since self-employed persons could be exempt from some or all of the requirements of the amended MHSW Regulations. HO and HSE should jointly consider how this aspect can be taken forward.

#### Miscellaneous legislative provisions

132. The general duty, coupled with the requirements of the MHSW Regulations (modified as necessary), should make unnecessary many of the fire safety provisions of the Acts and Regulations listed in Annex F (though not all, for example those relating to animal welfare). We recommend that these separate fire provisions should be reviewed and retained only if the provisions cannot be met by the proposed general duty and risk assessment requirements.

#### STANDARDS AND GUIDANCE

133. The general duty described in paragraph 125 above is not a specific prescription. It sets out the goal to be achieved, and leaves it to those who are subject to the duty to devise their own means of fulfilling it. It has been suggested to us that its application to employers, particularly small firms, would result in a 'consultants' charter', since many would not have the expertise to carry out a risk assessment for the purposes of general fire precautions. There are a number of reasons why we consider that this need not be so:

- many of the premises affected will have certificates issued under the FPA 1971. For them the precautions already required by the certificate may well be sufficient to meet the general duty, or may need very little in the way of improvement;
- the MHSW Regulations already require a risk assessment, and HSE have provided basic guidance on how to carry one out (reproduced in part at Annex K). Similar guidance should be available to cover general fire precautions;
- on-site assistance and advice should be available, such as that currently give by HSE inspectors on health and safety matters, and by the fire

authority under section 1(1)(f) of the FSA. However, fire authorities and HSE Inspectors will both need to continue to emphasise that for the majority of small businesses risk assessment is not a complex process. It is nothing more than a careful examination of what in their premises could cause harm to people so that they can weigh up whether they have taken enough precautions or should do more to prevent harm.

134. It is fundamental to a goal-based regime such as that recommended that it should be underpinned with standards and guidance to help the owners and occupiers of premises to meet the goals satisfactorily. This is the case with both HSWA and the Building Regulations, which are goal-setting in their approach. Under the Building Regulations a series of approved documents set out ways in which the Regulations can be complied with. They are not prescriptive. It is open to an applicant to seek to meet the goals in another way. But if the applicant has followed the approved document approach there is a presumption that the Regulations have been complied with. If another approach is used the onus is on the applicant to show how the regulations are met.

135. In the case of HSWA a wide range of guidance including Approved Codes of Practice (paragraph 49) is available dealing with all aspects of health and safety both in general terms (for example, *5 Steps to Risk Assessment*) and relating to specific types of premises and processes (for example *Health and Safety in Residential Care Homes*). In addition HSE Inspectors will advise on particular aspects of health and safety either on request, or while carrying out routine inspections. In the preparation and publication of advice there is frequently co-operation between HSE and other Government Departments, including the Home Office. Guidance on *Fire in the Printing Industry* and *Health, Safety and Welfare at Pop Concerts and Similar Events* has been issued as HSC publications on behalf of HSE, the HO and the Scottish Office.

## SECURING COMPLIANCE

### Self-Compliance

136. Many of those who gave evidence to the scrutiny supported the introduction of a greater measure of self-compliance into the system covering fire precautions in occupied premises, provided that this did not lead to a reduction in fire safety standards. *This last concern may arise from misinterpreting 'self-compliance' as 'self-regulation'*. It is important to emphasise the need to ensure that the general duty to provide and maintain adequate fire precautions is effectively policed, and that simple and intelligible codes of practice and guidance are available. To achieve this there should not be any diminution in the enforcement powers available. It is worth noting that none of the business interests who gave evidence to us was in favour of complete deregulation. Representatives of business commonly made the point in evidence to the

scrutiny that they could understand the reason why they were required to put particular fire precautions in place, and that pressure from enforcing authorities to improve standards was an important way of ensuring that safety standards were met.

### Enforcing authorities

137. If there is to be a single enforcing authority, there are three options: the building control authority, the fire authority and the HSE.

138. It has been argued that enforcement by the building control authority would enable continuity and consistency to be achieved between the construction and occupation stages, and that the necessary legislative provisions could be provided through section 2 of the Building Act 1984 (paragraph 92). However, if the approved inspector approach is extended, applicants may have a choice of building control authorities, and there is no reason to suppose that the authority which would enforce section 2 would be the same as the authority which originally approved the building. Additionally, while we recognise that many BCOs have considerable expertise in general fire precautions, the benefits to be gained from bringing all BCOs to the levels of expertise currently to be found throughout the Fire Service do not seem to us to outweigh the significant costs.

139. In addition, we are aware that building control authorities can, under Building Regulations, experience difficulty in carrying out inspections of buildings under construction or alteration, not least because of the statutory time limits for considering applications, as well as constraints on their resources. It is difficult to see how effective enforcement of general fire precautions in occupied premises could be assured were the function to be transferred to building control authorities.

140. A further consideration is that the long-term policy is for the building functions (including inspection but not enforcement) to be self-financing. It is not clear how building control authorities would finance enforcement duties if extended throughout the life of a building, unless charges were to be levied for inspections or building control fees were to be raised to subsidise wider enforcement functions. Neither option is attractive from the point of view of reducing the burdens on business.

141. The main advantage in using HSE as the enforcing authority would be a reduction in the number of inspectors visiting particular premises. We consider, however, that there are a number of reasons for leaving the responsibility for inspection and enforcement of general fire precautions with the fire authority:

- as we have said in paragraph 138 above, the Fire Service already has considerable expertise, both practical and theoretical, in fire safety matters. For HSE to seek to acquire this would be, as with BCOs, a major undertaking, and would have significant resource implications;

- it is a sensible use of a resource to employ operational fire crews on routine fire safety matters when they are not actively engaged on firefighting duties;
- each fire brigade needs to visit premises in its area in order to familiarise themselves with them for operational purposes (section 1(1)(d) of the FSA). It is sensible to use such visits for fire safety purposes;
- fire brigades currently make a great deal of use of 'cross fertilisation' between operational fire crews, their fire investigation units and fire safety officers. Fire safety officers are thus able to base their strategies on first-hand experience of what is happening on the ground. We consider that this interface is an important benefit of the current system which should not be lost.

Debatable

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142. We therefore recommend that the fire authority should continue to be the enforcing authority in respect of general fire precautions. In fulfilling this role it should be clear that they are acting in their own right, not as agents of HSC/E, even though the standards they are enforcing will be derived from health and safety regulations. This is preceded in the current arrangements under which local authorities are enforcing authorities for health and safety legislation in the case of certain premises, defined in regulations made under section 15 of HSWA. Similar regulations should be made in respect of the fire authority. Fire authorities should retain all the enforcement powers currently available to them, including prohibition notices under section 10 of the FPA 1971.

143. Although we are recommending that enforcement responsibility should continue to be split between HSE and the fire authority it is important to recognise that this should not result in the difficulties identified in paragraph 117 above. The general duty on the owners and occupiers of premises will require an integrated approach to risk assessment, and both enforcing authorities will be operating under the provisions of the same regulations. It will be essential for their enforcement approach to be closely co-ordinated, and we deal with this aspect in detail below (paragraph 231).

#### The future of certification

144. We have considered whether there is any need to retain some form of certification under the new system. There is, after all, no equivalent of certification in *general* health and safety legislation. Employers simply have a duty to maintain a safe and healthy workplace, and this is checked by inspection. However, in certain cases where, because of the severity of the risk, it is considered important to provide greater public confidence there are specific provisions for a certification-type approach within health and safety legislation. These include the removal of asbestos, safety

reports and cases for hazardous installations on and off shore, and the licensing of nuclear power stations.

145. Because of the disadvantages discussed in paragraph 110 above, we do not recommend that certification on the existing FPA 1971 model should continue. We consider, however, that there are a number of reasons why a document of some kind should be issued in respect of certain premises. Chief among these is the need to provide assurance to the public that they are safe in premises where there is likely to be a life risk if fire should occur. These include hotels and guest houses, where the risk to life is high if fire should break out when the occupants are asleep in unfamiliar premises. They also include places to which the public resort in significant numbers, such as shopping centres and cinemas.

146. We recommend, therefore, that in respect of certain kinds of premises the owner/occupier should be required to prepare and submit to the fire authority for approval:

- a simple plan showing the position of the fire doors, fire extinguishers etc which would form part of the emergency procedures required by Regulation 7 of MHSW Regulations; together with
- the results of his or her risk assessment and the precautions provided to address the risks.

The approval, in writing, would serve as confirmation that the fire authority was satisfied with the precautions. The essential differences between this and certification on the current model are:

- the responsibility for preparing the certificate would rest with the owner/occupier, who would thus retain ownership of the precautions;
- the continuing statutory duty to maintain an adequate level of general fire precautions would require the owner/occupier to revise them as time went on, and changes would be reflected in the certification process.

This meets the concern expressed in task force recommendation 222 (Annex E) that

*"Certificates tend to lift the sense of responsibility from management".*

147. We consider the plan to be important not only as a means of visually presenting important information to managers, employees, the public etc but also as a monitoring tool for the fire authority. This aspect is discussed further at paragraph 230. Owners/occupiers should be free to prepare the plan themselves or to seek the advice from either the fire authority or another source of expertise.

148. The continuing general duty on the occupier/owner will require the new-type certificate to be kept up to date both in respect of changes to the building, activities carried out or other factors which may affect risks to persons and of advances in technology or good practice which are reasonably practicable to adopt.

149. However, it would be neither sensible or practicable to require such a certificate to be resubmitted to the fire authority every time a minor amendment is made. Indeed, one of the criticisms levelled at the current certification system is the difficulty fire authorities have in updating certificates for premises which often undergo frequent minor alterations eg large hotels. We recommend, therefore, that the owner/occupier should revise the contents of the new-type certificate as often as appropriate recording the minor changes made but only resubmitting it to fire authority for approval in respect of substantial modifications meriting reappraisal of the risk control arrangements and the adjustment of precautions.

150. Such arrangements will ensure that general fire precautions are kept updated (in compliance with the general duty) but at the same time avoid placing a bureaucratic burden on either the owner/occupier or the enforcing authority. The certificate, plus any amendments, should, however, be available at the request of the fire authority during any inspection visit.

151. Consideration should be given to the practicality of defining 'substantial modifications' in the same terms as 'material alteration' or 'material change of use' under the Building Regulations. This would enable the owner/occupier to make a single notification to the BCO who would be responsible for informing the fire authority. This would not place extra burdens on BCOs since they would, in any event, be required to consult the fire authority regarding the proposed alterations to any premises holding a fire certificate (paragraph 166).

*BCOs minor changes*

152. Examples of premises which we consider should be subject to this type of certification include

- higher life-risk premises where people resort in large numbers, such as discothèques, leisure centres, and theatres
- sleeping risks, such as hotels, hostels, HMOs and residential care homes *certification*
- places where the size or layout present particular means of escape problems such as superstores, warehouses, sports stadia and sub-surface railways
- premises where innovative fire precautions have been adopted such as some large convention centres, shopping malls and department stores ?

- premises where significant quantities of flammable materials are used or stored; and multi-storey, multi-occupied factories.

Detailed decisions on the precise definitions of premises which should be subject to certification are outside our terms of reference, and will need to be taken following discussion and consultation in the normal way. *We recognise, however, that these definitions will be crucial in determining the workload for fire authorities, and the burdens on business.*

153. This approach would remove a significant number of premises from the current scope of certification without reducing safety because of the continuing general duty. These would include offices (where there is a very low life-risk), smaller shops where the means of escape are straightforward and many factories where the process has no significant effect on the fire risk. Defining which premises should be subject to the new style certification will probably involve some form of classification. We recognise that as a consequence, some premises may be subject to certificate which do not warrant this approach eg small well managed boarding houses. We recommend, therefore, that fire authorities should have the power to exempt any lower life-risk premises from the new certification requirement; this builds on the existing powers in FPA 1971.

154. As at present, fire authorities should be empowered to charge for certification work. However, given that the responsibility for preparing the material which will form the certificate will fall to the occupier of the premises, the charges for approving certificates should consequently reduce.

155. We consider that fire authorities' charging policies should be reviewed to reflect the change in responsibility for preparing the certificate and in view of concern expressed to us about the varying charging policies of different fire authorities.

156. The proposed legislative framework for existing buildings is shown graphically in Diagram 2.

#### The future of the Fire Precautions Act 1971

157. As part of the mechanism for bringing about the changes we propose, we recommend that the appropriate sections of the FPA 1971 should be made relevant statutory provisions of HSWA by amending Schedule 1 of that Act. They should be recast so as to make them:

- introduce a general duty on all owners and occupiers of premises to provide and maintain adequate fire precautions (paragraph 125); and

- provide for the revised certification requirements (paragraph 145).

158. Retaining the FPA 1971 as a relevant statutory provision provides the important assurance that its requirements cannot be repealed without being replaced by regulations which, operating in combination with HSWA, must maintain or improve existing standards (section 1(2) of HSWA). Hence this step will guarantee the retention of specific legislation governing general fire precautions. Other benefits include:

- the ability to extend the scope of FPA 1971 to cover all premises subject to HSWA (paragraph 108)
- achieving a consistent, risk-based approach to all aspects of fire safety including process and general fire precautions (paragraph 118)
- avoiding the danger of general fire precautions being considered in isolation from other health and safety risks (paragraph 118)
- ending the split in the implementation of EC directives (paragraph 121).

159. In coming to this conclusion we have considered two other options:

- retaining the FPA 1971 and substantially amending it; and
- repealing it.

We do not consider that the Act should be repealed. In our view this would give entirely wrong signals and could be misinterpreted as a move to lower standards of fire safety.

160. Amending and retaining the FPA 1971 also has disadvantages. The 1993 Home Office review recognised that

*'the 1971 Act does not provide the most suitable legislative means of ensuring fire safety in the 1990s and beyond.'*

We agree with this assessment, and consider that the Act's retention as a separate primary vehicle for fire safety legislation would reinforce the divide between general fire precautions and other health and safety matters, with all the anomalies to which this gives rise.

## New buildings and buildings undergoing alteration

161. We consider that the building control process, as it applies both to new buildings and buildings undergoing a material change of use or alterations, needs to be simplified in respect of fire precautions. The guidance issued in 1992, following the Bickerdike Allen report was intended to clarify the procedures for applicants by specifying one point of contact at any given time - the building control authority during construction, and the fire authority after completion.

162. We have found evidence that this approach has not been completely successful. Some applicants have told us that they are now unable to get the same level of advice on general fire precautions as had been the case in the past, and which they had found valuable. This is because those seeking advice from the fire authority on fire precautions are now referred to the BCO.

163. The availability of free advice from fire authorities is seen as being of value not least because free pre-submission advice on building applications is not always available from building control authorities, although some authorities offer this service informally. A builder complained to us that, having been asked to look at a possible development, he wished to obtain advice from the building control authority which, in the event, he could not obtain unless a formal application with the appropriate fee was made to the building control authority. He compared this procedure with the pre-Procedural Guidance arrangements of going through the fire officer who *'was always most helpful and gave his advice free of charge.'* Some fire brigades were also unhappy at this inability to provide a service which applicants valued. The Procedural Guidance also gives rise to anomalies in the context of two legal requirements:

- the requirement on fire authorities to make arrangements for giving advice on fire safety matters on request. Under the Procedural Guidance this duty can be met only by referring the questioner to the building control authority;
- the duty on those making alterations to certificated premises to notify the fire authority. This means that the applicant is bound to contact two authorities, and is a legal bar to the 'one-stop shop' approach which the Procedural Guidance is intended to encourage.

164. More serious problems have occurred in some areas. Some fire brigades have effectively withdrawn co-operation with building control authorities because of misunderstanding (on both sides) of the Procedural Guidance. We have heard evidence that the lack of expertise on fire matters among some BCOs has led to inappropriate fire precautions not being picked up, or plans being passed to fire authorities without comment. There appears in general to be a lack of consultation of fire authorities by BCOs. This may be due in part to the heavy workload on some

building control departments, and the tight turn-round times for applications specified in the Regulations.

165. It is clear, however, from the evidence we have received, that the problems that the Procedural Guidance were intended to address were real, and that, in the absence of legislative change, it was the best available means of seeking to simplify the procedures. The fact, however, that 29 pages of guidance are needed to negotiate the system is an indication that the procedures themselves are too complex. The procedural guidance was described to us by one consultee as a sticking plaster for a problem which required a more drastic remedy.

166. The problems arising from the current division of responsibility are, in our view, best avoided by a system which clearly places the statutory responsibility for fire precautions with one authority for the whole of the process leading up to occupation. This could be either the fire authority or the building control authority, but since the building control authority deals with all the other physical aspects of the building, we do not consider that it would be sensible to treat those relating to fire separately (which would also mean the applicant having to deal with two authorities). We therefore consider that the authority with statutory responsibility for overseeing all the physical fire precautions should be the building control authority<sup>5</sup>. The Building Regulations should be extended so that:

- they cover the additional physical fire precautions which are currently required by fire certificates (including first aid fire fighting equipment) and which are specified by the fire authority; *Hopefully, F.A./D+A*
- the buildings and structures covered include those not currently within their purview. In particular we recommend that the Building Regulations should apply to all schools and Crown premises;
- building control authorities have a statutory duty to consult the fire authority on all the fire precautions in new or altered buildings if the building is one which is likely to be certificated or the building control authority intends to dispense with a provision of Part B in response to a request from the applicant. *Reg read?*

167. The aim of the new system should be to ensure that once a building is completed it should have all the documentation that is necessary to show that its physical fire precautions are satisfactory. This, of course, will always be subject to what is known about the intended use of the building at the time of completion.

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<sup>5</sup> We include approved inspectors in the term "building control authority".

168. Currently, the completion of a building is marked in some, though not all, cases by the issue of a completion certificate by the building control authority. In future a document (which for convenience we refer to as an 'occupation certificate') should be issued in respect of *all* buildings at the end of the building control process. This recommendation, coupled with those in paragraph 166 is in line with task force recommendation 221. The uses of this document will be discussed further below (paragraph 187).

169. Fire precautions in buildings do not consist simply of physical installations. These constitute the 'hardware' of fire precautions, but there are also, particularly in more modern buildings, 'software' aspects. These include management of the building and the people in it, as well as the proper understanding and maintenance of the systems which have been designed into the building.

170. We have set out our view that the building control process can and should be concerned only with the 'hardware' side of fire precautions. The new-style occupation certificate cannot provide evidence that the management aspects of fire safety are or will continue to be satisfactory. The responsibility for ensuring that software for general fire precautions is in place and adequately maintained would be part of the statutory duty on owners and occupiers, and policed by the fire authority, along with the maintenance of the physical fire precautions (paragraph 125).

171. In modern buildings the fire safety systems may be very sophisticated, and a high level of knowledge will be needed to maintain and operate them. It has been suggested to us that in order to provide a tool for their proper management there should be a requirement for new buildings to have a 'log book'. This would record the systems in place, and provide a user's handbook and a maintenance and change record. We note, however, that the forthcoming Construction (Design and Management) Regulations (which implement an EC directive) will require each new building to have a health and safety file, which documents the building from inception to completion. We envisage that the occupation certificate issued by the BCO on completion should be attached to this file. We consider that this combination could serve many of the purposes of a log book for the building, and would provide a good basis for the maintenance and management of general fire precautions. We therefore see no need to recommend a separate requirement for log books.

172. Concerns have been expressed that the forthcoming Construction (Design and Management) Regulations or the risk assessment requirements could be used by either fire authorities or HSE Inspectors to require an occupier/owner to do more than what has already been approved by BCOs under the Building Regulations. However, this concern is misplaced, since Section 23(3) HSWA provides a statutory bar intended to prevent this (paragraph 84).

## Speculative buildings

173. We recognise that many buildings will be constructed with no specific use in mind. Occupation certificates can take account only of the use insofar as it is known at the time the building is completed, and to this extent we recommend that speculative buildings should be issued only with 'provisional' occupation certificates. Occupation of the building will, however, as now, bring it back within the building control process, because of the fitting-out work and the change of use. On completion of this phase of building control a full occupation certificate would be issued by the BCO.

## Approved Inspectors

174. Provision exists under the Building Act 1984 for the appointment by the Secretary of State of approved inspectors to whom applications for building control approval can be made instead of to a local authority. So far only one body, the National House Building Council, has been appointed. It operates over a very limited range of building control activities - those relating to domestic dwellings, which are outside the scope of the legislation we are considering.

175. We see no reason why an approved inspector should not operate the revised building control approval we have recommended, although, as under the current system, we do not consider that they should have any enforcement function. The principle of approved inspectors is that they should be competent to operate the Building Regulations in existence for the time being. In assessing competence the Secretary of State would no doubt take into account the fact that approved inspectors would have to take statutory responsibility for general fire precautions in new and altered buildings. The system we have described need not be confined to local authority building control.

176. We also see some scope for the development of third party approval of fire equipment and systems in order to help owners/occupiers to demonstrate that the general duty is being met. Verification by competent third parties already forms part of general health and safety practice (a test certificate for a lift for example will be accepted as evidence of adequate maintenance). We would not recommend that third party verification should become mandatory, but it should be encouraged as a way of demonstrating that owners/occupiers have complied with the general duty.

177. The proposed legislative framework for new buildings or buildings under alteration is shown graphically in Diagram 3.

## Type approval

178. Many companies erect what is essentially the same design of building in different parts of the country. In such cases the burden of submitting the same plans for approval to several building control authorities can be reduced through the Local Authority National Type Approval Certification scheme. The building design is certificated by one building control authority, and checked by another. The design is allocated a LANTAC reference number, and subsequent building control applications can then operate on a simplified 'fast track' approach, with attention concentrated on any modifications to, or departures from, the approved plan.

179. We commend this approach, and consider that its expansion should be encouraged.

## Home authorities

180. We have considered whether a system similar to the LANTAC scheme should be introduced for the certification functions currently carried out by fire authorities. However, as the new form of certification we propose will deal with the software of general fire precautions in occupied premises, which will differ in individual premises, we do not consider that a home authority approach is possible or desirable. Further, the extended building control remit we recommend will include many of the matters currently covered by fire certificates. The LANTAC type-approval system described above will therefore provide a home authority option for the approval of the physical fire precautions in new buildings.

## Self-compliance in building control

181. We were attracted by a suggestion put to the scrutiny by CACFOA. They suggested that, once national fire safety standards and approved documents were in place (paragraph 216), it should be possible to rely on greater self compliance in the building control process. If applicants were able to undertake to build in accordance with the national standards (perhaps including this as a condition in their agreements with their contractors), then building control could be confined to inspection of the physical fire precautions and other matters at different stages of construction to ensure that the undertaking was being complied with. CACFOA considered, however, that if this approach were adopted the statutory bar should not apply if, following completion of the building, the fire precautions were found *as a matter of fact* not to comply with national standards, and the building was accordingly likely to pose a life risk.

182. We consider that self compliance in this area is a goal which is worth aiming at, though its realisation will need to await the formulation and adoption of national standards.

## Standardisation of fire safety codes

183. Almost all those who gave evidence to the scrutiny agreed that one of the major problems of the current arrangements was that there were too many different codes and requirements applying to different types of case. A number of examples are noted in the paragraphs which follow (they are not exhaustive).

## Licensing and registration

184. Although the FPA 1971 is the only piece of legislation which fire authorities are statutorily responsible for enforcing, they act as agents for licensing and registration authorities in respect of the fire precautions elements of many other pieces of legislation, which are included in the list at Annex F. Each licensing/registration authority may impose its own fire precautions policy and standards through the licensing/registration system which may be at variance with the standards which the enforcing fire authority would consider appropriate or necessary.

185. Fire authorities have no control over the demand for agency work carried out for licensing/registration bodies, for which they are not normally paid. Agency work thus impinges upon fire authorities' own priorities, and prevents them from allocating their resources as they would wish.

186. Certain types of buildings (hotels, for example) may require a number of different licences, and may therefore be visited a number of times by the fire authority, acting as the agents of different licensing authorities, using those authorities' different criteria for each visit.

187. We recommend that licensing and registration authorities should, in future, be required to accept that the fire precautions are satisfactory if:

- in the case of a new or altered building designed for the purpose for which the licence is sought the applicant produces the new-style occupation certificate issued by the building control officer (described in paragraph 168 above);
- in the case of any other premises the fire authority confirm that the owner/occupier has complied with the duty to provide and maintain adequate fire precautions.

In the latter case the fire authority should inspect the premises in the light of the national fire safety standards described in paragraph 217 below, and not as agents of the licensing authority. This approach will go some considerable way to meeting task force recommendation 344.

## Houses in multiple occupation

188. The fire precautions for houses in multiple occupation are derived from the HA, and are specified in DOE circular 12/92. The standards in the circular differ in a number of respects from those in the Building Regulations, also the responsibility of the DOE, for example in respect of warning devices in common parts.

189. Houses in multiple occupation also give rise to difficulties arising from the broad way they are defined in the HA (paragraph 53), and the policies of some local authorities. The vagueness of the definition has led to a good deal of case law, but there continue to be grey areas, in particular between hotels and HMOs. It is common, for example, for a hotel which is unable to operate profitably from tourists alone (whether for seasonal or other reasons) to take in housing benefit recipients, effectively acting, to a greater or lesser extent, as a hostel for homeless people. In such cases many local authorities will regard the hotel as an HMO.

190. The confusion between hotels and HMOs means that the legal position on the fire precautions is not always clear. A hotel which has been certificated under the FPA 1971, may be regarded as an HMO. The fire brigade regard themselves as responsible for inspecting the precautions specified in the certificate. But the Environmental Health Department also regard themselves as responsible for the fire precautions under their HA powers. The FPA 1971 is effectively overridden in such cases by the HA, since the requirements of the Environmental Health Department will almost always go beyond the requirements of the existing certificate. Similar difficulties apply to residential care homes, which are also considered to be HMOs.

191. We recommend that owners of HMOs should be subject to

- the general duty to provide and maintain adequate fire precautions (paragraph 125); and
- the new certification procedures (paragraph 146)

and that a national standard relating to means of escape in HMOs should be developed to replace Department of the Environment Circular 12/92.

192. Such an approach will remove the problem of fire precautions being frozen in time (a concern of EHOs), since the general duty will require such updating of precautions as are 'reasonably practicable' if they become outdated, and will also remove the scope for inconsistency by providing a single yardstick (the national standard) for determining the adequacy of means of escape in HMOs, as in all other regulated premises.

193. We have already referred to the vagueness of the definition of HMO in the HA. Case law has established that the term can apply to self-contained flats which in most respects have the characteristics of single private dwellings. We would regard the imposition of the general duty on the owners of such dwellings as inappropriate. We recognise, however, that some flat conversions can have the characteristics of an HMO, and that there is a strong case for requiring adequate fire precautions in buildings of this type. This issue poses difficult questions of definition, which we recognise. We recommend, therefore, that the Department of the Environment should review the definition of a house in multiple occupation with a view to avoiding the imposition of inappropriate fire precautions on those which have the characteristics of single private dwellings.

194. In strict logic the enforcement of fire precautions and means of escape in HMOs should fall to fire authorities (paragraph 142). Local authorities and others have, however, argued that housing authorities (normally acting through EHOs) should retain this enforcement responsibility because:

- they are empowered to deal with a wide range of HMO issues, including fire safety, hygiene, general amenity and subsequent standards of management. They can therefore take a 'holistic' approach covering all areas in which remedial work or improved management is necessary. This provides individual property owners with a single point of contact and continuity;
- these authorities will also have responsibility for building control and planning, making it easier to adopt a consistent approach towards HMO landlords;
- they are more easily able to identify HMOs through their general housing work;
- they have the resources, through renovation grants, to support the work which they can require to be done using their statutory powers.

195. We recognise the force of these arguments. We consider, however, that it is important that the fire authorities should be involved as a matter of course in the inspection and approval of HMO fire precautions. Although the available statistics are unsatisfactory in a number of respects, there is general agreement that HMOs represent a high fire and life risk. We have commented elsewhere on the advantages of an integrated approach to risk assessment (such as could be provided by EHOs), but we are concerned that in the case of HMOs this could be undermined by the conflict of interest which can arise. This is because the inspecting authority may, if it takes enforcement action, become responsible both for housing any residents who

may become statutorily homeless as a result, and for the payment of mandatory grants to improve the premises.

196. Nonetheless, we recognise that the enforcement of fire precautions in HMOs represents the only circumstances in which this type of legislation applies to occupied domestic premises, and that in dealing with people in their homes sensitivity is necessary. We have therefore tried to identify an approach which would enable fire precautions to be brought up to standard while taking these considerations into account. We have considered two options:

- fire authorities would be responsible for the inspection and certification of HMOs as agents of the housing authority; or
- fire authorities would have enforcement responsibility, but with a requirement formally to consult the housing authority before taking enforcement action.

197. The first option has the disadvantages of agency work described in paragraph 185. Fire authorities would be unable to plan and target their resources in an important area of work. The second would mean two separate enforcement authorities inspecting HMOs, and to this extent could not be described as deregulatory. However, taking into account

- the very high life-risk in HMOs
- the fact that the second option does not preclude partnerships (which already exist in a number of places, and should be encouraged) between fire authorities and EHOs to improve fire safety in HMOs; and
- the fact that the second option would also allow a co-ordinated approach to landlords

we recommend that the second option should be adopted.

## Petroleum

198. Petroleum is the subject of special legislation for historical reasons. The legislation is outdated, and does not match other more modern provisions relating to highly flammable liquids. The enforcement of petroleum regulations can appear ridiculous in a number of respects. One of the precautions still specified for premises where petroleum spirit is stored is a bucket of sand. The design criteria for petroleum storage facilities conflict with those for other highly flammable liquids, whose storage is governed under regulations under HSWA. We were told of an oil refinery where millions of litres of petrol were stored in tanks above the ground. No licence was

required for this, since the site was subject to CIMAH. There was, however, an on-site petrol filling station for vehicles, which required its own licence, and the storage tanks had to be underground.

199. We recommend that the legislation governing petroleum should be incorporated into the general framework governing highly flammable liquids. This can be achieved without primary legislation since the provisions in question are a relevant statutory provision of the HSWA. In particular the need for a separate petroleum licence should be abolished for all premises except those, such as petrol filling stations, where the public have access to petroleum spirit. The precautions for all premises where petroleum is used and stored should be updated to modern standards. This recommendation is in line with the task force recommendation 146 (Annex E).

### Special Premises

200. Certain premises are covered by the FC (SP) Regulations. They include:

- industrial sites processing or storing specified dangerous substances in specified quantities;
- explosive factories or magazines which require a licence under the Explosives Act 1875;
- any surface building at a mine within the meaning of the Mines and Quarries Act 1954;
- construction sites.

The issues relating to construction sites are discussed separately in paragraph 206.

201. The regulations are the responsibility of HSE and cover the entire premises, including open air structures, and require the certification of general fire precautions. HSE have told us that in their view there is little justification for the special treatment of these premises. The general fire precautions required in offices and conventional workplaces on such sites are similar to those required in other factory premises where fire authorities are the certifying and enforcing authority. The current situation illustrates the problems which can arise in operating in parallel a prescriptive certification regime for general fire precautions alongside goal-based regulatory controls for other health and safety issues, namely the lack of flexibility to prioritise competing areas for expenditure on the basis of relative risks.

202. We concur with this view. We recommend, therefore, that the Special Premises Regulations should be revoked and replaced by the proposed general duty (paragraph 125). The responsibility for process fire precautions at special premises should remain with HSE and continue to be subject to the controls of CIMAH Regulations, the MHSW Regulations and other appropriate health and safety legislation.

203. The responsibility for policing the general duty relating to general fire precautions at these sites should fall to the fire authorities. Should any building on these sites require a new-style certificate (as described in paragraph 146) then it should be approved by the fire authorities.

204. These new arrangements should not increase the workloads of the fire authorities since

- they are already closely involved in emergency planning at major hazard sites; and
- the small backlog of work on certification under the FC(SP) Regulations will have been cleared before the regulations are revoked.

205. Premises subject to explosives licensing, should, however, form an exception to this proposal because of the special nature of explosives manufacture and storage, where the process risk far outweighs any other risk. We recommend that general fire precautions in such premises should be included in HSE's current review of explosives legislation. We understand that this is about to consider requirements for the manufacture, storage and use of explosives.

#### Construction sites

206. Construction activities are often complex and constantly changing. Any system for the enforcement of general fire precautions must be able to respond to the changing physical environment. In the term 'construction' we include not only the erection of new buildings but also the refurbishment of existing buildings (both occupied and unoccupied), demolition, excavation and tunnelling.

207. Currently, because of doubts as to whether the FPA 1971 applies to construction sites, there is an agreement between HSE and HO that HSE should deal with general fire precautions on construction sites under HSWA, with fire authorities providing advice on request. It is intended, however, that this responsibility should be transferred to fire authorities once the HO have made regulations to implement the general fire precautions requirements of the Temporary or Mobile Construction Sites Directive.

208. This directive is essentially in two parts:

- the first supplements and extends the Framework Directive on construction sites. This part is to be implemented by the forthcoming Construction (Design and Management) Regulations made under HSWA which are due to come into effect on 1 October 1994. These Regulations (to be enforced by HSE) will require amongst other matters
  - a person in charge of a construction project to plan and manage both process and general fire precaution risks as part of their management of all risks; and
  - a health and safety plan covering emergencies, which would include fire.
- the second (known as Annex IV) mirrors the requirements of the Workplace Directive which does not apply to construction or extractive industries. Currently it is intended that this Annex will be subject to the split in implementation discussed in paragraph 120, and HSE and HO are developing separate regulations to implement the health and safety aspects and the general fire precaution requirements of the directive respectively.

209. In addition HSE has responsibility for certifying temporary accommodation units on construction sites under the FC (SP) Regulations.

210. The continually changing nature of construction sites presents difficulties in practice in distinguishing between process fire precautions and general fire precautions. It is the nature of construction that the process itself is the prime determinant of the fire risk, in particular dictating what means of escape are both necessary and practicable. Additionally, construction work in existing buildings which continue to be partially occupied can affect the general fire precautions for those occupants.

211. Against this background we recommend that:

- HSE should retain the enforcement responsibility for all aspects of fire safety (both process fire precautions and general fire precautions) on construction sites;
- where a construction site occupies part of an existing building which is still in occupation, then the fire authority should retain the responsibility for the general fire precautions of the entire building taking into account the effect of the construction activity on the

general fire precautions for the normal residents. (HSE would still be responsible for the construction activity);

- Annex IV should be implemented by a single set of regulations made under HSWA;
- the Fire Certificates (Special Premises) Regulations 1976 applying to temporary accommodation units on construction sites should be revoked; if certification of the sleeping accommodation is considered necessary (paragraph 152) then this responsibility should fall to HSE.

#### Local Acts and byelaws

212. The formulation of national fire safety standards should make it possible to abolish the fire safety provisions of local Acts and byelaws and we recommend accordingly. Historically, fire provisions in local Acts have been intended to meet local needs and to meet perceived deficiencies in national legislation. Our recommendation that there should be nationally agreed goal-based standards should render local fire requirements unnecessary. We regard it as unsatisfactory that because of the existence of local Acts different standards of fire safety can be required in different parts of the country. The principles of fire safety are no different in different parts of the country, and if a particular requirement is considered valuable then it should be considered by the national advisory panel (paragraph 217) for incorporation in national standards.

213. Fire precautions requirements should in future be excluded from model byelaws for the same reason.

214. We are aware that the proposal to abolish local fire safety provisions may be controversial, and may be interpreted as a lessening of fire safety standards in those areas which are able to enforce requirements which are not available elsewhere. There is local legislation, for example, which enables the fire authority to insist on the installation of sprinklers in certain sorts of buildings, something on which the national Building Regulations do not insist.

215. It is beyond our terms of reference to consider the merits or otherwise of sprinklers. But the proper place for the debate is the national advisory panel, discussed below, which should come to a view on their value on a national basis, and advise accordingly.

## National standards: co-ordination mechanism

216. A major advantage of bringing all regulated premises within the same legislative framework is that it would enable the many different standards which currently apply to be replaced by a single national set of standards. The application of these standards to specific cases would be catered for by guidance and codes of practice which reflected particular circumstances. In a goal-based system such guidance is necessary since it provides an approach which, if followed, will tend to show that the standards have been met. It also, however, leaves open the option of adopting alternative approaches, if it can be shown that they meet the goals.

217. The national fire safety standards should be arrived at so far as is possible through consensus. We regard it as essential, therefore, that all interested parties should be involved in their formulation. We recommend that there should be a mechanism for developing national standards on means of escape, the initial integrity of buildings and physical fire precautions. We further recommend that this should be in the form of an advisory panel, to replace the current Fire Advisory Panel which advises on the fire safety content of the Building Regulations. The panel should include representatives of all those with an interest in the outcome, including building control authorities, fire authorities, the construction industry, Government Departments responsible for fire safety (including the DH, MOD, DFE and others responsible for significant estates), architects and designers, fire safety equipment manufacturers, the British Standards Institute and the insurance industry.

218. The principal aim of the panel should be to identify the general principles of fire safety, and to formulate standards in the form of the goals to be achieved in all regulated premises. The panel should also supervise the preparation of specific guidance and codes of practice to enable the national standards to be applied consistently to particular types of premises. The guidance will help owners/occupiers to meet their statutory responsibilities. This exactly parallels the current arrangements for Building Regulations, where the regulations themselves set the goals and the approved documents issued under them describe ways in which they may be met.

219. The panel would provide a forum for considering, for example, the special needs of people with disabilities and the position of historic buildings. It will often not be practicable to ensure fire safety by improving the physical integrity of historic buildings. Improvement work could be prohibitive on cost grounds, and might significantly affect their character. The panel might consider a code for historic buildings addressing, for example, the extent to which the inability to achieve fire safety through physical measures could be offset by active management controls.

220. It is important for the success of this approach that all government departments and agencies with responsibilities for fire safety in their premises should issue guidance only after it has been discussed in the panel. Without this discipline there is a danger that advice will conflict with the national standards and other guidance issued under them. An example of this is the introduction of amendments in 1993 to regulations on children's homes by the DH. The new regulations covered fire precautions, but the HO were not consulted. The regulations required authorities responsible for children's homes to ensure that fire certificates had been obtained for them under the FPA 1971. Children's homes are not designated under the FPA 1971, and so cannot have fire certificates. The issue of the regulations caused confusion among fire authorities and authorities responsible for children's homes, which would have been avoided if better consultation had taken place. While specific guidance on schools, hospitals, care homes, HMOs and so on will always be a matter for the Departments concerned, it should be possible, by discussing them in the panel, to ensure consistency in the standards which BCOs and fire authorities will be required to enforce.

221. It should be emphasised that we do not envisage any enhancement of the role of the panel to quasi-regulatory status. Its function should be to provide Ministers with advice on the national standards, but the ultimate responsibility for regulations should remain with Ministers.

222. It is important that the national standards and the guidance produced under them should be as concise and closely targeted as possible. It should not be necessary for those affected by the legislation to acquire a large library of legislation and codes of practice, much of which may be irrelevant to them. The advisory panel should make it a priority to ensure that guidance is available in a form which precisely meets the needs of its various users.

#### British and European Standards

223. One useful function which the expanded fire advisory panel might fulfil is an input into the formulation of British Standards for fire related equipment and systems. It would also be advantageous if UK representation on European standards bodies could be co-ordinated through the panel.

#### Research

224. In the time available to us we have been unable to look at the important question of research in any detail. We consider, however, that the advisory panel should have a role in relation to research on fire safety matters. We do not recommend that it should direct public research effort on fire, such as that carried out by the Fire Safety Research Station at Borehamwood. It should, however, seek to

identify topics on which research is needed, and encourage those commissioning research to steer their efforts towards these topics.

#### Co-ordination of enforcement

225. Under the regime we have recommended there will be three enforcing authorities: building control authorities, fire authorities and HSE. This raises issues of consistency both within authorities and between them. So far as this latter aspect is concerned, the two main interfaces will be those between building control authorities and fire authorities, and between fire authorities and HSE.

#### Consistency within enforcing authorities

226. Consistency within individual authorities is a matter of management, and we make no specific recommendation for bringing any outside mechanism into play on this point. Each authority should continue to ensure that it has the necessary procedures in place for monitoring decisions and ensuring that policy is being applied consistently in the line with the DTI publication *Working with Business - a Code for Enforcement Agencies*.

227. One of the problems identified by a number of those who gave evidence was the high turnover of fire service personnel engaged on fire safety duties. This could mean a developer or a building control authority having to deal with several different fire officers during the lifetime of a project, and routine safety inspections after occupation being carried out by different officers. The major difficulty arising from this was said to be inconsistency in the approach taken by different officers.

228. It is unrealistic to expect the same individual to stay in the same post indefinitely. The Fire Service has a career structure, and it is natural that officers should move on from time to time. We were concerned, however, that some consultees told us that the career opportunities for fire service personnel specialising in fire safety work were less favourable than those for operational crews. As a result, we heard that in the past, fire safety has not always been an attractive posting, although there is encouraging evidence of changing attitudes at all levels in Fire Service. There are a number of reasons why career opportunities for officers specialising in fire safety work are less favourable, and the development of a separate career structure for fire safety officers has a number of drawbacks as well as advantages. The arguments for an FPO career specialism can be summarised as follows:

- it would serve to emphasise the importance of fire safety work
- specialism may encourage even greater professionalism and help ensure that practitioners are fully up to date with developments in fire safety

- wider experience should breed greater confidence in FPOs' own judgement and encourage a greater willingness to consider alternative solutions
- if operational duty requirements were waived, it would allow, for example, the use of officers who might be medically retired and whose expertise would otherwise be lost to the Fire Service.

The arguments against an FPO career specialism can be summarised as follows:

- it could create a barrier to the interchange of experience between FPOs and operational crews, which provides an important input into FPO work
- it could breed elitism in FPOs and suspicion in operational officers to the detriment of the work of both groups.

The need would remain for secondments of operational officers who are already involved in re-inspections to ensure a proper appreciation of fire safety. We recommend that the Home Office should examine, together with fire authorities, ways in which a career in fire safety work might be made more attractive within the fire service.

229. More generally, it is not surprising that fire officers can appear inconsistent if they are required to visit premises several times for different licensing/registration purposes applying different authorities' standards on each occasion. The development of national standards which we have recommended should effectively end this difficulty. Further, apparent inconsistency might also be explained, in part, by the fact that premises may have changed in a material respect between one inspection and another.

230. The introduction of the general duty coupled with a risk based approach to assessment makes it essential that fire authorities should continue to develop means of recording what agreement has been reached with the occupier of non-certificated premises during any inspection visit. The recording system will be important for two reasons, since it should

- document the agreement reached with the occupier providing the baseline for future inspections. The use of a simple plan may help with this;
- provide the means for fire authorities to develop a future inspection programme based on the assessment of risk (eg the nature of the premises and the activities, the quality of management).

The development of recording systems might be a suitable matter for discussion in the HELA forum (paragraph 237).

### Consistency between fire authorities and between fire authorities and HSE

231. We do, however, see considerable advantage in a mechanism to encourage consistency of interpretation between authorities, and to enable enforcers to exchange problems and expertise, discuss differences of interpretation, and promulgate advice based on these discussions. Even the clearest formulations can give rise to differences of interpretation. There are over 60 different fire authorities in the UK, and it is unrealistic to expect perfect consistency in policy and approach (there are over 300 different building control authorities).

232. There are already mechanisms in place to help achieve as much consistency as possible. For fire authorities CACFOA acts as a forum for the exchange of information between brigades, and has a well developed on-line information system (FINDS) which enables a wide variety of data to be sent quickly to brigades and others. The Fire Service Inspectorate also seeks to ensure a consistency of approach in the field of enforcement. Fire authorities are, however, autonomous bodies, and it is not possible to direct them on matters of policy.

233. Our recommendation to make fire authorities the enforcing authority for general fire precautions in their own right will extend the range of issues on which they will be operating their own, rather than somebody else's, policy. This will actually reduce the number of different policy-making bodies in the area of fire safety. Given, however, the emphasis we have placed on a national approach, it is important that there should be as much consistency in approach to the enforcement of fire precautions legislation as possible.

Conflicts.  
4 Contradictions  
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234. The introduction of a general duty, the move towards greater self-compliance, and the proposal that both fire authorities and HSE should operate under the provisions of the same regulations - the MHSW Regulations - make it essential for their enforcement approach to be closely co-ordinated. As one consultee commented

*'it is important to ensure that all [enforcing authorities] use the same technical basis for their assessment [of risk] and that all should have the same end point in view.'*

235. HSE in consultation with the HO, has issued guidance to its own and local authority inspectors on enforcement of fire safety. Separate but similar guidance is to be issued by the HO to fire authorities. We consider, however, for the reasons set out above, that there should be a mechanism for achieving a consistent approach to enforcement and fostering appropriate enforcement practices based on a goal-setting approach.

236. The fact that there are over 60 different authorities need not be an obstacle to achieving the necessary consistency. HSE is not the sole enforcing authority for HSWA. Some 400 local authorities also have responsibility for enforcing health and safety legislation in certain specified premises. HSE, therefore, has established a mechanism for trying to secure consistency between both itself and the local authorities, and between the different authorities. This takes the form of the HSE/Local Authority Enforcement Liaison Committee (HELA), which, together with five sub-committees, is serviced by a small unit in HSE.

237. We see no reason why the co-ordination of enforcement of fire safety legislation by fire authorities under HSWA should not be brought within the HELA mechanism, and we recommend accordingly.

#### Differences between fire authorities and building control authorities

238. One of the benefits of our proposals for the formulation of national standards is that the process would allow all interested parties to make an input to the standards, with the aim of achieving consensus. We note that in Scotland, the acceptance of building standards by all involved parties means that there is no need for fire authorities to be consulted on individual applications, since they know that the agreed standards will ensure that the physical fire precautions are satisfactory. Fire authorities are therefore consulted only if there is a proposal to relax the standards.

239. We do not consider that this approach can yet be applied in England and Wales. Scottish building standards are prescriptive, and we have expressed our preference for a goal-based approach. Nonetheless, in due course, it may be possible to arrive at a position where, if the approach followed in a particular case is in accordance with approved guidance, fire authorities and BCOs could agree that no consultation is necessary.

240. The main advantage of consensus in arriving at national standards for physical fire safety matters is that, if achieved, it should reduce the scope for disagreements at local level between BCOs and fire authorities on means of escape and other aspects which are covered by building control. Where, however, disputes do occur, we do not recommend that there should be any formal mechanism for resolving disputes between building control authorities and fire authorities over the fire precautions specified for particular buildings. The changes we have recommended to the building control process will place the statutory duty for approving all fire precautions with the BCO, after consultation with the fire authority. That duty must extend to his or her taking responsibility for the decisions that are made, including the weight to be given to advice received during consultation. We do not consider that it is in the interests of public administration to provide a mechanism for one public authority to challenge the decisions of another in this area.

241. We do, however, consider that the process of building control should be as open as possible, and that the comments of the fire authority on an application should be made available to the applicant by the building control officer as a matter of course, and should also be publicly available for inspection on request at the appropriate office of the local authority. Where building control is undertaken by an approved inspector copies of the comments should be sent to the local building control authority, who should make them available for inspection.

242. We regard it as important that consultation of fire authorities by building control authorities should be appropriate to the circumstances of individual cases. It would be undesirable for rigid consultation procedures to be devised in order to cope with large and complex projects which were then applied as a matter of course to more straightforward applications. The procedures should be flexible enough to allow building control authorities and fire authorities to agree different levels of consultation to match the circumstances, while ensuring that the expertise of the Fire Service continues to be at the disposal of BCOs and developers.

243. The legislation and enforcement arrangements which would apply throughout the life cycle of a building under our proposals are shown graphically in Diagram 4.

#### The domestic sector

244. The majority of fire fatalities occur in domestic premises which (except for new premises subject to the Building Regulations) are outside the scope of general fire precautions legislation. It would be unrealistic and impractical to impose and enforce statutory responsibilities on the residents of single domestic dwellings. This leaves education and advice as the best means available to try to reduce the level of casualties.

245. We have been impressed by the wide range of fire safety activities carried out by fire brigades and other organisations<sup>6</sup> which are targeted at the domestic sector. The national campaign on smoke detectors has raised awareness significantly, and brigades have their own local strategies designed to alert the public to the dangers of fire in the home, and the correct action to take if fire occurs (for example practical demonstrations of the catastrophic effect of putting water on a chip-pan fire).

246. Although all fire brigades carry out educational activities, they are under no statutory obligation to do so. Section 1(1)(f) of the FSA requires them only to have arrangements in place for the giving of advice on request. In view of the importance of reducing fire casualties in the home we consider that fire authorities should

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<sup>6</sup> These include the Fire Protection Association, 138 local fire safety groups and CACFOA. Work is also co-ordinated by the Home Office and the Fire Protection Association during National Fire Safety Week.

now also have a specific duty to educate the public on fire safety matters, and we recommend the introduction of such a duty.

#### Advice to the non-domestic sector

247. If fire authorities are given a statutory duty to provide fire safety education to the domestic sector the question arises whether advice to businesses should continue to be provided free under a provision similar to section 1(1)(f) of the FSA. There is evidence that the availability of free advice has been appreciated by the commercial sector, particularly small businesses.

248. We have considered whether fire brigades ought to have discretion to charge for fire safety advice to the business sector. The arguments against charging can be summarised as follows:

- prevention is cheaper than cure. If advice is provided free, and is heeded, then it may result in fewer calls on Fire Service operational resources
- it might detract from the public service image of the Fire Service, reflected in the universally high satisfaction rate shown in brigades' customer surveys
- businesses may object to paying for advice from a service to which they already contribute through rates and taxes.

249. Arguments in favour of charging are:

- the existence of free advice may be a disincentive to the development of expertise outside the Fire Service, at both primary level (architects) and secondary level (fire consultants)
- the service can be abused by architects and designers obtaining free advice and charging their clients for so doing (though we have found no specific cases of this)
- business already pays for advice on other statutory duties, such as tax matters.

250. We consider that it is perfectly reasonable for fire authorities to be able to give general commonsense fire safety advice free of charge. We also consider, however, that this can be differentiated from assistance with the detailed interpretation and application of guidance or codes of practice. On balance we consider that fire authorities ought to have a power, though not a duty, to charge for fire safety advice to commercial undertakings where alternative sources of advice exist.

## Appeals

251. Currently appeals against a refusal to issue a fire certificate and other decisions of fire authorities are to the Magistrates' Court. We have been struck by the very small numbers of appeals which have been made against refusal. It has been suggested that this reflects public satisfaction with the system. There is, however, also evidence that the nature of the appeal system itself prevents a number of appeals from being made. Prospective appellants may be put off by the prospect of a court appearance; and we have also been told by some applicants that it is often cheaper simply to comply with the fire authority's requirements than to embark on a lengthy appeal.

252. So far as the Building Regulations are concerned the DOE under the terms of the procedural guidance, offers an informal determination service to resolve disputes between BCOs and applicants and BCOs and fire authorities. We recommend that the determination procedure should be retained for Building Regulations matters. Over the last few years, because of reduced levels of activity in the building industry, the determination system has not been used as frequently as in the late 1980s. Nevertheless, in 1993, 19 Part B determinations were allowed and 12 were dismissed.

253. We consider that there is some force in the argument that the Magistrates' Court is not suitable forum for appeals in relation to fire precautions matters in occupied premises especially where the points at issue are of a technical nature, although we acknowledge that they already have experience of dealing with technical issues in a wide range of matters.

254. There are a number of alternatives to an appeals system to the Magistrates' Court. The 1993 Home Office review of the FPA drew attention in paragraphs 177 and 178 to the options of using industrial tribunals, technically qualified arbitrators mutually acceptable to both the appellant and the enforcing authority, or a determination procedure similar to that which exists in respect of Building Regulations.

255. It is important to consider the appropriate appeals mechanism in the light of the overall system of control of fire precautions in occupied premises proposed in this report. At one level, there may be disputes about the interpretation of the law which suggests the need for a judicial or quasi-judicial mechanism. However, disputes are more likely to arise from the interpretation of codes and standards and will more

generally centre on whether the general duty is being met. Such disputes would be better dealt with in a forum constituted to consider such technical matters.

256. However, we do not consider it necessary or desirable to create two types of appeals system for the matters described above. A dual appeals system would be unnecessarily complex and would not be to the advantage of any of the parties involved. Disputes may also, in practice, cover both interpretations of law and interpretations of technical matters. Despite the reservations expressed about industrial tribunals in the HO review of the FPA 1971, and given that we recommend that general fire precautions in occupied premises should be brought under HSWA umbrella, we recommend, on balance, that a new appeals system should be based on the current tribunal arrangements which apply under HSWA. It should be noted that in the same way that Magistrates' Courts can be appealed to the Crown Court, so industrial tribunals can be appealed to the High Court.

257. We consider, however, that formal appeal should come to be regarded as a last resort where there is disagreement between a fire authority and an owner/occupier. Fire authorities should ensure that their complaints procedures are effective and user-friendly. The first stage should be to try to settle the issue through discussion - an approach which is currently adopted, so far as we are aware, in all fire authorities. Indeed many disputes are resolved without recourse to the courts. For example, in many cases where a fire authority serves a notice of steps to be taken to bring the fire precautions up to a level at which a fire certificate can be granted, the steps specified will not be a surprise to the applicant as the fire officer will have discussed them in detail with the applicant. The issue of the notice will simply be a formal record of the fire authority's requirements which may well have been agreed with the applicant.

#### Crown immunity

258. Premises occupied by the Crown may be subject to certification under the FPA 1971, but they are immune from enforcement under that Act, and are inspected not by the fire authority, but by the Crown Premises Inspection Group within the Home Office Fire Service Inspectorate. Similarly, the Building Regulations do not apply to Crown premises.

259. The Crown, as an employer, is subject to the duties imposed by HSWA but exempt from the provisions relating to prosecution and enforcement notices. The HSC decided in 1974 that an administrative procedure should be established between the HSE and Crown bodies and the outcome was the system of Crown Notices for use by HSE inspectors in respect of Government premises which mirror those issued by virtue of sections 21 and 22 of HSWA. The system is set out in General Circular GC/163 which was drawn up in discussion between the then Civil Service Department and HSE.

260. We see no compelling reason why premises occupied by the Crown should be subject to a different enforcement regime as a matter of course. Since there is already a presumption that Crown premises will meet statutory fire safety requirements, we see no reason why the Government should not announce that in future fire precautions legislation and Building Regulations will apply to them, and that they will be inspected by fire authorities. Enforcement should be by way of Crown improvement notices on the lines of those currently issued by HSE in respect of Crown Premises. It should be for individual government departments to make a case for exempting particular premises from this presumption on strictly limited grounds (which would include national security). Special arrangements may also be necessary for Royal residences.

## MACHINERY OF GOVERNMENT IMPLICATIONS

261. Our terms of reference asked us to consider the possibility of bringing all policy responsibility for fire safety together in a single department. There are currently three main departments with an interest in fire safety legislation. The HSE is responsible for process fire precautions, the HO is responsible for general fire precautions in occupied buildings; and the DOE is responsible for fire safety provisions in Building Regulations.

262. Our conclusion that the Holroyd distinction is still valid (paragraph 91) means that building control and the management of fire safety in occupied buildings will continue as separate operations. We do not think it appropriate therefore, to bring the different responsibilities together in a single government department.

263. We have recommended (paragraph 166) that the additional physical fire precautions for new and altered buildings should now fall within the remit of BCOs. This would need amendment of the Building Regulations, and the assumption by DOE of a small area of responsibility which is currently the responsibility of the HO.

264. We have recommended that in future, fire authorities should enforce fire precautions using legislation within the framework of HSWA, the FPA 1971 being taken within that framework as a relevant statutory provision. This raises the question of the boundary between the responsibilities of the HO and the HSC.

265. Constitutionally, policy responsibility for proposing fire safety legislation to Ministers would, under our proposals, become a matter for the HSC. It would be responsible for proposing the necessary regulations modifying the FPA 1971 and (insofar as any amendment is necessary) the existing MHSW regulations. They would also be responsible for future regulations implementing other directives covering fire safety.

266. However, we recognise that both the fire authorities and the HO have expertise on general fire precautions which should not be lost from the policy development process. Moreover, the Home Office, through the Fire Service Inspectorate, has, and will retain, responsibility for monitoring all activities of fire authorities, including fire safety. We recommend, therefore, that HO and HSE should establish procedures ~~which will allow them to work closely in partnership~~. **As part of this process we would expect the HO and HSC/E to act jointly in drafting and consulting on any proposed regulations relating to general fire precautions.** For example, although HSC would be responsible for issuing the consultative document on any proposed regulations it should be used to satisfy the consultative requirements of both Section 50 of HSWA and the FSA. This approach has already been adopted for the proposed Safety Signs Regulations (paragraph 66).

267. Although regulations under HSWA are proposed by HSC they may be signed by any Secretary of State. Examples of health and safety regulations proposed by the Commission but signed jointly by Ministers include The Classification, Packaging and Labelling of Dangerous Substances Regulations 1984, which were signed by the Secretary of State for Employment and the Secretary of State for Trade and Industry, and the Railways (Safety Case) Regulations 1994, signed by the Secretary of State for Transport and the Secretary of State for Employment. There is no reason, therefore, why the Home Secretary should not, as at present, be a signatory, or joint signatory of regulations specifically covering general fire precautions.

268. Nothing in our proposals affects the HO's other current general responsibility for the Fire Service, including such matters as the organisation and establishments of fire brigades, their efficiency, equipment, and training. The Fire Service would continue to look to the Home Secretary as "their" Minister.

269. We recognise that our recommendations will inevitably generate a considerable *new* workload for both HO and HSE which will not be reflected in their current PES allocations. We consider, however, that this is an example of a need to spend in the short term to save in the long term. HSE believe that an outcome of our recommendations could be that they would need *significant extra resources* to cater for:

- the policy and legal work on the legislative reforms
- technical advice which would be an essential input into the work.
- work associated with the new HELA responsibilities
- liaison with fire authorities to deal with requests for information etc
- central services.

## ANNEX A THE SCRUTINY MACHINERY AND THE METHODOLOGY ADOPTED

1. The scrutiny was announced by the President of the Board of Trade on 17 January 1994. Its formal machinery comprised three groups of people -

- the scrutiny team itself
- the Steering Committee
- the Contact Group

2. The Steering Committee included Government Departments with an interest in the scrutiny. It was chaired by the Department of Trade and Industry with representatives of the Prime Minister's Policy Unit, the Home Office, the Department of the Environment, the Scottish Office, and the Health and Safety Executive. The Secretariat was provided by the Department of Trade and Industry.

3. The Contact Group comprised a number of people from outside Government appointed on a personal basis by Ministers to provide a source of *ad hoc* reference and advice to the scrutiny team. They were

Mr Stewart Kidd, Director of the Fire Protection Association

Mr Richard Saxon, Partner, Building Design Partnership

Mr David Smith, Chief Building Control Officer, Ipswich Borough Council and Chairman of the Institute of Building Control.

Mr Alfred Thompson, Chief Officer of the Durham Fire and Rescue Brigade

Mr Brian Twyman, Fire Safety Manager, Forte (UK) Ltd

Mr Bill Yates, Manager (Fire and Security), Shell UK Ltd

4. The scrutiny gathered evidence in five ways

- through written consultation. A consultation letter was sent to all the bodies listed in Annex A1 in early February setting out the main issues and inviting comments by 11 March. The Annex indicates those bodies that actually submitted written evidence.
- through discussion with members of the contact group, all of whom were visited during February and March.

- through fact-finding visits. The visits we made are listed in Annex A2.
- through taking oral evidence from a number of organisations. Those organisations which gave oral evidence to the scrutiny are shown in Annex A3.
- through a consultancy study of fire safety regulation in other developed countries carried out by the Fire Protection Association. A summary of the findings is at Annex A4. The consultants' report is at Appendix 1.

5. Throughout the scrutiny the team were assisted by regular discussions with the Steering Committee, usually meeting jointly with the Contact Group.

**ORGANISATIONS AND INDIVIDUALS CONSULTED**

- \* Responses received from those sent the consultation letter
- ~ Unsolicited responses received
  
- \* Access Committee for England
- Access Committee for Wales
- Alliance of Small Firms and Self-Employed People Ltd
- \* Arson Prevention Bureau
- \* Assembly of Welsh Counties
- \* Association of British Chambers of Commerce
- \* Association of British Insurers
- \* Association of Building Engineers
- \* Association of County Councils
- \* Association of District Councils
- Association of Insurance and Risk Managers in  
Industry and Commerce
- Association of Local Authority Risk Management Groups
- \* Association of London Authorities
- \* Association of Metropolitan Authorities
- \* Association of Professional Fire Consultants
- ~ Association of Specialist Fire Protection Contractors  
and Manufacturers (ASFPCM)
- \* Bickerdike Allen Partners

- ~ Borough of Great Yarmouth
- ~ Bournemouth District Council
- ~ Brentwood Borough Council
- British Airports Authority
- \* British Airways
- \* British Approvals for Fire Equipment
- \* British Automatic Sprinkler Association
- British Council of Shopping Centres
- \* British Council for Offices
- ~ Building Design Partnership
- \* British Fire Protection Systems Association
- British Franchise Association
- \* British Hospitality Association
- \* British Property Federation
- \* British Retail Consortium
- British Safety Council
- British Shops and Stores  
(including Menswear Association)
- \* British Standards Institution
- British Tourist Authority
- ~ Brooksbank Industries Ltd
- \* Building Employers Confederation
- \* Building Research Establishment

Burgoyne Consultants Ltd

Business in the Community

~ Butler & Young Associates

\* Campaign for Bedsit Rights

~ Cameron Hall Developments

\* Cape Boards Ltd

\* *Chartered Institute of Building*

~ Chelmsford Borough Council

\* Chemical Industries Association Ltd

~ Cheshire County Council

\* Chief and Assistant Chief Fire Officers' Association

\* Child Accident Prevention Trust

~ City of Nottingham

Civil Aviation Authority

\* Committee of Vice Chancellors and the Principals of Universities

\* Confederation of British Industry (including Small Firms Council)

\* Confederation of British Industry (Scotland)

\* Construction Industry Council

\* Construction Industry Employers Council

Constructors' Liaison Group

Consumers' Association

~ Consultants and Training in Fire Safety

- \* Convention of Scottish Local Authorities
- \* Cooperative Union Ltd
- ~ Cumbria County Council
- ~ Dacorum Borough Council
- ~ Dawsons International (Fire Protection Safety & Rescue Consultants)
- ~ Derby County Council
- \* District Surveyors Association
- ~ Dorset County Council
- ~ East Dorset District Council
- ~ East Lindsey District Council
- ~ Econ Engineering Ltd
- ~ Electrical Contractors' Association
- Electrical Wholesalers' Federation
- Electrowatt
- Engineering Industries' Association
- \* English Heritage
- ~ Envetron Standby Power Ltd
- ~ Essex Building Surveyors' Association
- ~ Essex County Council
- Federation of Crafts and Commerce
- ~ Federation of Master Builders
- \* Federation of Small Businesses

- \* Federation of Small Businesses (Scotland)
- \* Fire Brigades Union
- ~ Fire Brigades Union Officers National Committee
- \* Fire Extinguishing Trades Association
- \* Fire Protection Association
- \* Fire Risk Management Services
- \* Fire Safety Development Group
- ~ Fire Safety Engineering Consultants Ltd
- \* Fire Service College
- \* Fire Research Station (BRE)
- Fire Training Organisation Ltd
- Forum of Private Business
- ~ Guildford Borough Council
- ~ Gwent County Council
- ~ Hampshire County Council
- Health and Housing Group
- \* House Building Federation
- ~ Hove Borough Council
- ~ Humberside Fire Brigade
- ~ Ikeda Hoover Ltd
- \* Institute of Building
- \* Institute of Building Control

- Institute of Directors
- \* Institute of Fire Prevention Officers
- \* Institute of Fire Safety
- Institute of Grocery Distribution
- Institute of Independent British Businesses
- Institute of Small Businesses
- \* Institution of Environmental Health Officers
- \* Institution of Fire Engineers
- ~ Islington Borough Council
- ~ Kent County Council
- ~ Kidde Thorn Fire Protection Ltd
- ~ Kingsway Shopping Centre
- ~ London Borough of Bromley
- ~ London Borough of Croydon
- ~ London Borough of Hammersmith & Fulham
- ~ London Borough of Lambeth
- ~ Lancashire County Council
- ~ Lincoln Co-operative Society Ltd
- ~ Lincoln County Council
- Ladbroke Pic
- \* London Boroughs' Association
- ~ Loss Prevention Council

- London Underground Ltd
- ~ Maidstone Borough Council
- \* Mail Order Traders Association
- ~ Maldon District Council
- Marks and Spencers
- ~ Menvier
- ~ Merseyside Fire and Civil Defence Authority
- ~ Mid Suffolk District Council
- ~ Multi-Alarm Systems
- \* National Association of Fire Officers
- National Association of Hospital Fire Officers
- National Association of Shopkeepers
- National Association of Toy Retailers
- National Association of Warehouse Keepers
- National Childminding Association
- \* National Consumer Council
- ~ National Council of Building Material Producers
- \* National House Building Council
- ~ NHS Estates
- ~ Nissan Motor Manufacturing (UK) Ltd
- ~ No Climb Products Ltd
- ~ North Yorkshire County Council

- ~ Paramount Publishing Ltd
- RADAR
- Radio, Electrical and TV Retailers Association
- ~ Royal Borough of Kensington & Chelsea
- \* Royal Institute of British Architects
- \* Royal Institution of Chartered Surveyors
- Royal National Institute for the Blind
- Royal National Institute for Deaf People
- ~ Royal Priors Shopping Centre
- Royal Society for the Prevention of Accidents
- ~ Rushcliffe Borough Council
- J Sainsbury Pic
- The Scottish Council
- Scottish Trades Union Congress
- \* Shell UK Ltd
- ~ Siemens
- Small Business Bureau
- ~ Somerset County Council
- \* Standard Fireworks
- \* Sypol Environmental Management Ltd
- ~ Tendring District Council
- \* Textile Services Association

- \* Trades Union Congress
- ~ Trafford Metropolitan Borough Council
- ~ Turner and Townsend Group (TTPM)
- ~ Tyne and Wear Metropolitan Fire Brigade
- ~ Tyne and Wear Passenger Transport Executive
- \* UK Sectorial Committee for Fire and Security
- Union of Independent Companies
- ~ University of Portsmouth
- Voluntary Groups Association
- ~ Walter Frank & Sons
- ~ Waltham Forest Consumer Protection
- \* Warrington Fire Research
- ~ West Midlands Fire Service
- ~ Winchester County Council

In addition, Government Departments were also consulted

## INDIVIDUALS

\* J W Beech MIFireE  
Chief Fire Officer  
Kent

\* P Brown  
Environmental Health Officer (Croydon)

\* T Crafer  
Crafer Associates

N Crosby  
Protech Fire Engineering Consultants

\* D Drysdale  
University of Edinburgh

\* Dr Everton  
University of Leicester

\* R A Graham  
Fire Specialist

\* Simon Ham  
Consultant Fire Engineer

R B Hawkins & Associates  
Cambridge Science Park

\* R Hotson  
Senior Fire Officer  
Bedfordshire County Fire and Rescue Service

M Laws  
Arup Associates

Dr D Lewis

\* H L Malhotra  
Agniconsult

Dr G Munday

\* A C Parnell  
Consultant Architect

\* A Peberday

Taylor Pucill

\* J Northey  
Fire Surveyor Magazine

J Rayner  
Risk Engineering Ltd

\* Dr B Rimmer  
Slough Estates Plc

Dr G Sellars  
Arthur D Little

P Sheen  
Consultant

~ Charles Simeons

D Tucker  
Tucker Robinson

R Warburton  
Ex ROSPA

\* K Williams  
London Borough of Islington (Building Control)

Dr Brian Appleton

Professor John Roberts  
Dept of the Built Environment  
University of Central Lancashire

\* B Hearst  
Menvier Swain Group

M Kormanic  
Lighting Industry Federation

\* Colin Todd  
CS Todd & Associates

~ Peter Thurnham MP

\* Gary Whitworth  
Managing Director  
Fire-Stat International Ltd

Neil Wallington  
Editor  
Fire Engineers Journal

## ANNEX A2

### FACT FINDING VISITS

In addition to visits to individual Members of the Contact Group the scrutiny team undertook the following visits. Other bodies and individuals from whom we took oral evidence on their "home territory" are included in the list in Annex A3.

<i>Date</i>	<i>Hosts</i>	<i>Purpose of Visit</i>
15 February	HSE and the London Fire Brigade	Inspection of a multi-occupancy factory in East London
16 February	Liverpool City Council	To examine the issues from the perspective of the building control operation of a large metropolitan city. We also visited a number of premises showing the use of different powers to secure improvements in various types of property, particularly of the HMO type.
18 February	ICI Runcorn	To examine the interface between fire and general health and safety legislation on a large CIMAH site.
22 February	Lincolnshire Fire Brigade	To examine the issues from the perspective of a largely rural brigade.
23 February	Fire Service College	To discuss the issues with the Commandant/Chief Executive, and to examine the training - available to fire officers and others.
25 February	East Sussex Fire Brigade	To discuss the issues from the perspective of a mixed urban/rural brigade.

28 February- 1 March	Bournemouth Borough Council	To examine the issues from the point of view of a smaller building control authority, with particular reference to the tourist industry, including small hotels and guest houses.
17-18 March	West Midlands Fire Service	To examine the issues from the perspective of a large metropolitan brigade. Visits included industrial sites, large innovative shopping and convention centres, and large and small hotels/houses in multiple occupation.
13 April	Fire Safety Development Group	Invited as observers to a seminar at which the issues were discussed by representatives of different sectors with an interest in fire safety.

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## ORGANISATIONS AND INDIVIDUALS WHO GAVE ORAL EVIDENCE TO THE SCRUTINY

All members of the Contact Group  
Association of County Councils  
Association of District Councils  
Association of London Authorities  
Association of Metropolitan Authorities  
British Council of Shopping Centres  
British Retail Consortium  
Building Employers' Confederation  
Campaign for Bedsit Rights  
Chartered Institute of Building  
Chief and Assistant Chief Fire Officers' Association  
CBI Small Business Bureau  
Confederation of British Industry  
Construction Industry Council  
Construction Industry Employers' Council  
Convention of Scottish Local Authorities  
Department of the Environment  
Department of National Heritage  
District Surveyors' Association  
Dr Rosemarie Everton, University of Leicester  
Fire Brigades Union  
Glaxo Research and Development Ltd  
Health and Safety Executive  
HM Inspectorate of Fire Services  
Home Office

House Building Federation  
Institution of Environmental Health Officers  
Institution of Fire Engineers  
London Borough of Croydon  
London Borough of Ealing  
London Boroughs Association  
National Association of Fire Officers  
National Association of Shopkeepers  
National House-Building Council  
Royal Borough of Kensington and Chelsea  
Royal Institute of British Architects  
Royal Institution of Chartered Surveyors  
Scottish Office  
Peter Thurnham MP  
Trades Union Congress

## FIRE SAFETY REGULATIONS AND ENFORCEMENT IN EUROPE AND ELSEWHERE: A SUMMARY

The Fire Protection Association was commissioned by DTI to undertake a study into the way in which fire safety regulations for buildings are controlled. The remit specified;

- i. background information on fire safety regulation and its administration and enforcement in other developed countries; and
- ii. an assessment, where possible, of the effectiveness of the system in practice, identifying any strengths or weaknesses to assist the scrutiny team in determining whether any lessons can be learnt and applied to the UK system.

The study was to cover the countries of France, Germany, Netherlands, Sweden, USA and New Zealand but in the time available it was not possible to obtain even a broad outline of the German system. The full study is attached at Appendix 1. The main findings are summarised below but these should be read with the following caveats in mind:

- the time allowed, 18 working days, to carry out the study of a subject which is complex was very restricted;
- international comparisons are difficult and need to be treated with caution as consideration must be taken into account of the geographical, socio-economic and cultural variations.

### Summary

In general:

- in all countries use of model codes is a prime factor in promoting a standardised approach to fire safety and informing developers of the required level of fire protection
- main aims of regulations and codes are related to life safety, but in the Netherlands the codes have a strong emphasis on the prevention and containment of fires in buildings including single family dwellings.

- generally insurance companies appear to play little or no part in the consultation process involved in developing standards.
- some consideration has been given to self-certification in respect to the initial integrity of the building but this has not been developed to any great extent.
- arrangements for control and enforcement are generally the same as in England and Wales with the building departments dealing with the construction and design and the fire service being responsible for the occupation of a building. In France, however, fire safety in occupied buildings is the responsibility of labour inspectors who have similar functions to HSE inspectors.

In particular:

- in New Zealand, Sweden and Netherlands there has been a move away from prescription with Regulations/codes being goal setting and performance based.
- in New Zealand, Sweden and France the Regulations/codes incorporate a risk based approach.
- in New Zealand, Sweden, France and Netherlands officers in the fire service are either graduates or hold diplomas.

## LEGISLATION IN SCOTLAND

### Building Control

1. Building Control in Scotland is exercised through the Building Standards (Scotland) Regulations 1990 and 1993 made under the Building (Scotland) Act 1959 and administered by local authorities. Although Scottish Building Regulations are goal-based, they are backed by technical standards which are mandatory. A degree of flexibility exists in that alternative approaches not covered by the technical standards may be allowed through relaxations and dispensations approved in individual cases.
2. The Secretary of State for Scotland is advised on building standards matters by the Building Standards Advisory Committee, which is the equivalent of the Building Regulations Advisory Committee in England and Wales.
3. Scottish building standards apply to new buildings, alterations, extensions and changes in use of buildings and cover those standards which can reasonably be required for the purposes of securing the health, safety, welfare and convenience of people inhabiting or frequenting buildings, the safety of the public generally and for the conservation of fuel and power. The current Technical Standards cover a wide range of matters including structural fire precautions and means of escape from fire, facilities for fire-fighting and warning of fire in dwellings.
4. Building control in Scotland is a pre-emptive system, in that local authorities issue warrants without which building work may not commence, and completion certificates, without which completed buildings may not be occupied.

### Type Approvals (Class Warrants)

5. In general terms, Section 4B of the 1959 Act (introduced by the Health and Safety at Work Act 1974) provides that a body designated by the Secretary of State for Scotland shall make recommendations to him as to whether an application for a class warrant should be granted. No such body has yet been designated and therefore there is at present no formal class warrant scheme in operation in Scotland. However, the Scottish Building Control Organisation was set up by the local authorities which are building control authorities in order to operate the Scottish Building Control Type Approval Scheme, which provides a similar service to that intended for the statutory Class Warrant Scheme. Under the local authority scheme, builders and developers can register individual house designs for use anywhere in Scotland. The builder merely has to apply to the Organisation, or to any building control authority. The design will be examined by the Organisation and, if approved, will be accepted automatically by any constituent authority. The service is free at the time of

application but the normal designated fees for building warrants will be charged for any houses covered by the type approval the builder plans to erect.

### Class relaxations

6. A Class Relaxation is a direction given by the Secretary of State either on an application made to him or of his own accord, dispensing with or relaxing certain building standards regulations under specified conditions for a product to be used in a class of building. The Class Relaxation direction may be either specific or generic with reference to the product and it does not apply to any particular building but to all buildings in the specified class. Applications should be in writing and accompanied by such plans as are necessary to show the direction subject to which it is proposed the building standards regulations should apply and the relationship to the building as a whole. Before giving a direction the Secretary of State is required to consult the Building Standards Advisory Committee and such other bodies as appear to him to be representative of the interests concerned. Because the new 1990 version, in effect, brought the Technical Standards which support the building standards regulations up to date and because of the increase in functional as opposed to prescriptive standards, the scope and demand for class relaxations has, for the moment at least, largely disappeared. A small number of class relaxations remain effective but no new applications have been determined in recent years. This position may, however, change if the Technical Standards again fail to reflect contemporary building and construction requirements.

### Staged warrants

7. The Health and Safety at Work 1974 introduced a new subsection (3A) to Section 6 of the Building (Scotland) Act 1959. This empowers a local authority to issue a building warrant on the strength of an application which does not provide all the requisite information. A condition of issue is that work on any stage in respect of which information is incomplete must not start until the authority have been given such further information as they require to satisfy themselves that that stage will not fail to conform to the regulations and until an amendment to the warrant has been made. The relevant stages and procedural requirements have been prescribed in the 1981 Procedure Regulations.

### Comparison with England and Wales

8. Building control in England has developed along different lines from that in Scotland, reflecting the different range of problems in Scotland to which, over the years, the system has had to respond (eg fire in tenements). Prior to 1984, building control in England and Wales was conducted by a variety of legislative means. However, it was concluded that a specific Act dealing with Building Control was

desirable and, as a result, the Building Act for England and Wales came into force in 1984 enabling the introduction of technical standards through Approved Documents.

9. There are fundamental differences between the approaches to building control in England and Wales and in Scotland. First, the Approved Documents which support the England and Wales Building Regulations are advisory rather than mandatory (ie there is no obligation to adopt any particular solution contained in an Approved Document if the relevant requirement can be met in some other way). Secondly, the equivalents of building warrants are not required in England and Wales in all cases and, in addition, completion certificates have only recently been introduced and then only on request.

10. Another fundamental difference is the way in which the need for a building warrant" in Scotland or "a building notice" or "deposit of plans" in England and Wales arises. In Scotland, a warrant is required when a change of use is contemplated. In England and Wales only a *material* change of use will make a submission to the local authority necessary.

11. The Scottish concept of "change of use" is all-embracing whereas the English one of "material change of use" is not because changes in the use of a building in England could take place without a submission to the authority. If an alteration was made to a building in England which was *not* a material change of use and the building was for example subject to the Fire Precautions Act then the fire authority could ask for compliance with their own design standards to cater for any change in the perceived risk. Therefore, in Scotland the Building Standards apply practically in all cases but the consequence of the English procedures is that Building Regulations *and* Home Office design guides or guides by other Departments could apply in certain cases leading to multiple control.

12. In Scotland building control authorities do not routinely consult fire authorities about individual applications. Fire authorities are consulted as a matter of course where relaxations are sought in individual cases. It has been put to us that there is no need for fire authorities to be consulted about applications which do not seek to depart from the Technical Standards as the Scottish Fire Service plays an important role in helping formulate proposed standards at an early stage of their development, even before they are formally submitted to BSAC. It is argued that this input to the content of the standards obviates the need for routine consultation on individual applications as building control authorities and fire authorities are working to agreed standards.

### Fire Precautions Act 1971

13. The Fire Precautions Act 1971 applies in Scotland as it does in England and Wales with specific provisions to take account of the Act's interaction with means of escape requirements covered by building standards regulations, reflecting the different systems of Building Control north and south of the border.

14. In Scotland policy responsibility for the 1971 Act falls to the Scottish Office Home and Health Department which liaises closely with the Home Office on such matters as the preparation of fire safety guidance.

### Health and Safety at Work etc Act 1974

15. The Act applies throughout Great Britain but not to Northern Ireland which has its own health and safety legislation.

16. Policy responsibility for HSWA is the same in Scotland as in England and Wales falling to the HSC/E in conjunction with the Department of Employment.

## ANNEX C

### BICKERDIKE ALLEN PARTNERS: TERMS OF REFERENCE

1. To examine whether the extent and effect of any 'overlap' between building control legislation and legislation intended to protect occupants from fire or the way the legislation is implemented places burdens on business which are more than are necessary to achieve the appropriate level of health and safety; and specifically to examine:

- a. any weakness in the links between building control authorities and fire authorities at the planning and construction stages and the extent to which a properly structured consultation procedure and national guidelines would be beneficial;
- b. whether consultation processes could be simplified (if for example there were a requirement for fire authorities to be provided with their own copies of plans);
- c. problems (of inconsistency for example) caused by local legislation;
- d. the scope for improvements in the control procedures with a view to ensuring that they result in a single certificate issued by the building control authority perhaps with separate appendices concerning fire matters;
- e. means of overcoming the delays that arise while new architectural developments are assessed and the practicability of guidance on the alternatives to structural fire precautions in innovative buildings which cannot comply with appropriate existing regulations or codes of practice;

and in the light of this,

2. Undertake an examination of the technical and practical skills required to permit authoritative advice to be given on all fire prevention aspects of building, planning, construction and adaptation for use;

3. Consider the training and management requirements necessary to secure their consistent enforcement;

4. On the basis of this examination to make recommendations, in particular, on the most appropriate methods of enforcement, including the forms of authority by which it would best be done, and the scope for the further involvement of the private sector taking account of any implications there would be for existing legislation.

## ANNEX D

### BICKERDIKE ALLEN PARTNERS: RECOMMENDATIONS

#### Recommendation No.1

A comprehensive national guidance document on the achieving of approvals of fire safety provisions in the design, construction and adaptation of buildings should be published whose primary purpose would be the clarification for Building Regulations Applicants of all relevant legislative and procedural matters and particularly of the protocols of consultation between the parties. The document, published under the joint imprimatur of the DTI, DOE and the Home Office, should be widely publicised and kept under review and up to date with changes and developments in the legislation and technology.

#### Recommendation No.2

A comprehensive design guide covering all aspects of fire safety in most types of buildings should be prepared as a basic text for professional development in this subject.

#### Recommendation No.3

An arrangement should be introduced whereby as soon as the BCO and Applicant identify an issue of fire safety on which they appear to be heading for an irreconcilable disagreement, they should be able in advance of a Building Regulations application to make an early formal approach to the Department of the Environment to have the issue determined.

#### Recommendation No.4

Applicants submitting plans for other than simple buildings for approval under the Building Regulations should demonstrate compliance with Part B of the Regulations on specifically marked-up drawings and provide to the BCO an additional set of these drawings for the use of the FPO.

#### Recommendation No.5

Building Regulation 11(2) should be amended to limit the plans required under this section to the specially marked-up drawings referred to in Recommendation 4.

#### Recommendation No.6

FPOs should observe the protocols for consultation set out in the national guidance document which will require that they refer Applicants in the first instance to BCOs, that they confirm their advice to Applicants in writing and that, in doing so, they distinguish clearly between the requirements of legislation and recommendations which the Applicant is free to follow or disregard.

#### Recommendation No.7

Where, on completion of construction or adaptation of a building the Applicant submits to the BCO defined 'as-built' record drawings showing compliance with Part B of the Regulations, and a schedule of active fire protection systems, the Local Authority should issue a Building Regulations Part B Compliance Certificate which should include these drawings and schedule.

#### Recommendation No.8

A copy of the Building Regulations Part B Compliance Certificate including drawings and schedule should be forwarded by the BCO to the Fire Authority.

#### Recommendation No.9

The educational development of building designers, BCOs and FPOs should be encouraged by the early establishment of a national network of professional development courses in colleges and polytechnics in which the Fire Service College, being a unique national institution concerned exclusively with fire matters, should form a core institution with new and strengthened links with the Fire Research Station and other educational and training establishments in the preparation and running of modular courses in all aspects of fire, adding depth to its present breadth of course coverage and targeted at various groups concerned with fire precautions such as Fire Prevention Officers, Building Control Officers, architects, fire protection engineers and fire safety managers.

#### Recommendation No.10

As soon as possible, and accompanied by new, additional Approved Documents, Part B of the Building Regulations should be extended to cover most building types and most aspects of fire safety which can be provided during the design, construction and adaptation of buildings.

#### **Recommendation No.11**

As soon as the Building Regulations have been extended to cover most building and aspects of fire safety, local legislation should be amended to avoid duplication.

#### **Recommendation No.12**

Since the fire precautions field continues to change in terms of regulation, scientific research, management and applied technology, and especially to monitor the impact of implementing the proposals of the Stage Two Review of the Building Regulations and the phasing in of the various stages of the Fire Safety and Safety of Places of Sport Act 1987, the situation should be reviewed again within a period of three to five years.

## CONSTRUCTION AND OTHER INDUSTRY TASK FORCES: ABSTRACT OF RELEVANT RECOMMENDATIONS

*The recommendations of individual task forces were endorsed by all the other task forces.*

The recommendations below and their numbering are taken from the booklet, *Deregulation Task Forces Proposals for Reform* published by DTI in January 1994.

### CONSTRUCTION TASK FORCE

#### Building and Fire Regulations

213. All regulations affecting the design of buildings should be consolidated into a single system.

214. The valuable elements of the Building Regulations and the Fire Precautions Act should be consolidated into a revised set of Building Regulations under the control of the DOE.

215. The present form of the Building Regulations is a model and should be retained.

216. An authoritative manual on the Building Regulations should be produced and made generally available.

217. All regulatory provisions must be economically tested before adoption, with cost proportional to benefit.

220. DOE should make it their continuing mission to consolidate all regulations affecting building into a logical whole.

221. DOE should expand Part "B" of the Building Regulations to cover all fire safety design aspects with the same goal-based approach as the present code. At the completion of a new or remodelled building, a certificate should be issued by the Building Control Officer or a private certifier.

222. We do not favour the issue of periodic fire certificates as these tend to lift the sense of responsibility from management. Inspection should be carried out by DOE using the Fire Service as agents.

223. The Fire Service needs a full database on each building in order to fight fire efficiently. It should continue to be part of the regulations that such a database be prepared and transferred to the Service prior to certification.

## Fire Regulations

333. Fire safety should be regulated along with other safety regulations under either DOE or HSE.

## OTHER TASK FORCES

### Flammable Substances

146. HSC should rationalise legislation (Factories Act, The Offices, Shops and Railway Premises Act, Highly Flammable Liquids and Liquefied Gas Regulations, Petroleum Consolidation Act, etc).

### Theatres Act and Public Entertainment Licensing

344. Remove inconsistencies caused by enforcement and regulatory differences between the recommendations of fire officers and listed building regulations.

ACTS AND REGULATIONS RELATING TO FIRE SAFETY

Excluding relevant statutory provisions of HSWA (Annex G) and  
Local Acts (Annex H) and Acts specific to Scotland

Animal Boarding Establishments Act 1963

Animals (Scientific Procedures) Act 1986

Betting, Gaming and Lotteries Act 1963 (as amended by Lotteries  
and Amusements Act 1976)

Breeding of Dogs Act 1973

Building Act 1984

Building Regulations 1991

Caravan Sites Act 1968

Caravan Sites and Control of Development Act 1960

Celluloid and Cinematograph Film Act 1922

Children Act 1958 and 1989

Children and Young Persons Act 1969 and 1933

Child Care Act 1980

Childrens Homes Regulations 1991

Chronically Sick and Disabled Persons Act 1970

Cinemas Act 1985

Cinematograph (Safety) Regulations 1955

Cinematograph (Safety)(Amending) Regulations 1982

Community Homes Regulations 1972

Disabled Persons Act 1981

Education Act 1944

Education (School Premises) Regulations 1981

Education (Schools and Further Education) Regulations 1981

Education (Particulars of Independent Schools) Regulations 1982

Fire Precautions Act 1971 and orders made under it  
 Fire Precautions (Non-Certified Factory, Office, Shop and  
 Railway Premises) Regulations 1976  
 Fire Services Act 1947 as amended by Fire Service Act 1959  
 Fire Safety and Safety of Places of Sport Act 1987  
 Fireworks Act 1951  
 Foster Children Act 1980  
 Gaming Act 1968  
 Housing Act 1985 and regulations made under it  
 Housing (Consequential Provisions) Act 1985  
 Licensing Act 1964  
 Local Government (Miscellaneous Provisions) Act 1982  
 Local Government Acts 1936 and 1989  
 Local Government and Housing Act 1989  
 London Local Authorities Acts 1990 and 1991  
 National Health Service and Community Care Act 1990  
 Nurseries and Childminders Regulations 1948 (as amended by  
 the Health Services and Public Health Act 1968)  
 Nursing Homes Act 1984  
 Nursing Homes and Mental Nursing Homes Regulations 1984  
 Pet Animals Act 1951  
 Private Places of Entertainment (Licensing) Act 1967  
 Public Health Act 1936 and 1961  
 Registered Homes Act 1984  
 Residential Care Homes Regulations 1984  
 Riding Establishments Act 1970  
 Safety at Sports Grounds Act 1975  
 Theatres Act 1968  
 Zoo Licensing Act 1981

## ANNEX G

### RELEVANT STATUTORY PROVISIONS OF HSWA CONTAINING PARTICULAR FIRE SAFETY PROVISIONS

- \*<sup>1</sup> Explosives Act 1875
- \*<sup>2</sup> Celluloid Regulations 1921
- \*<sup>2</sup> Petroleum (Consolidation) Act 1928
- \*<sup>2</sup> Manufacture of Cinematograph Film Regulations 1928
- \*<sup>2</sup> Cinematograph Film Stripping Regulations 1939
- \*<sup>2</sup> Magnesium (Grinding of Castings and other Articles)  
Special Regulations 1946
- \*<sup>2</sup> Dry Cleaning Special Regulations 1949
- \*<sup>2</sup> Testing of Aircraft Engines and Accessories Special  
Regulations 1952
- Mines and Quarries Act 1954 (SS 73 and 115)
- Coal Mines (Firedamp Drainage) Regulations 1960  
(regulations 12 and 13)
- Coal Mines (Cardox and Hydrox) Regulations 1956 (Reg.2)
- \*<sup>2</sup> Shipbuilding and Ship-repairing Regulations 1960
- \*<sup>2</sup> Factories Act 1961 (S.31)
- Construction (General Provisions) Regulations 1961
- \*<sup>2</sup> Highly Flammable Liquids and Liquefied Petroleum Gases  
Regulations 1972
- Fire Certificates (Special Premises) Regulations 1976
- Classification, Packaging and Labelling of Dangerous  
Substances Regulations 1984
- Control of Industrial Major Accident Hazards Regulations  
1984
- Dangerous Substances in Harbour Areas Regulations 1987
- Docks Regulations 1988