



Gwasanaeth Tân ac Achub  
Canolbarth a Gorllewin Cymru

Mid and West Wales  
Fire and Rescue Service

# Welsh Fire & Rescue Services Business Fire Safety Enforcement Policy

Business Fire Safety Department

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# 1. Introduction

The Welsh Fire and Rescue Services (“the Services”) enforce general fire safety legislation on behalf of the three Welsh Fire and Rescue Authorities (“the Authorities”). The legislation the Authorities enforce includes:

- [The Regulatory Reform \(Fire Safety\) Order 2005](#),
- [Health and Safety at Work Etc. Act 1974](#) (general fire precautions excluding process risks),
- [The Construction \(Design and Management\) Regulations 2007](#) (occupied premises).

This Enforcement Policy Statement is based on the principles of ‘Better Regulation’ contained in the [Regulators’ Code 2014](#) and sets out the approach the Authorities will take to enforce the legislation. It will be used in conjunction with guidance issued by the Welsh Assembly Government, Parliament; Communities and Local Government; the [Department for Business Innovation and Skills](#), the [Better Regulation Delivery Office](#) and other relevant government departments.

## 2. The Principles of Enforcement

### 2.1 Proportionality

The Services will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

***The Regulators' Code 2014 section 1.1 states:***

*"Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity."*

### 2.2 Targeting

Targeting means ensuring that regulatory effort is directed primarily towards those whose activities give rise to higher levels of risk to the public and/or employees ("relevant persons"). The Services will in addition continue to audit premises post incident and in response to complaints.

The Authorities aim to make sure, through targeting, that the direction of regulatory effort takes into account the level of risk. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it. The Authorities have systems for prioritising regulatory effort. These include a risk-based inspection programme and localised plans to identify high risk premises. Risk assessment, utilising methodology and data provided by Government, together with local data, intelligence and knowledge, underpins the Authority's approach to regulatory activity.

***The Regulators' Code 2014 section 3.2 states:***

*"Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action."*

### **2.3 Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Persons with responsibilities under the Order managing similar risks can expect a consistent approach from the Authorities in the advice given; the use of enforcement powers; decisions on whether to prosecute; and in the response to incidents and complaints.

The Authorities have arrangements in place to promote consistency in the exercise of discretion, including arrangements for liaison with other enforcing authorities and will seek to continually improve through internal review, audit and consideration of comments received.

Should enforcement action prove to be necessary in the circumstances of the case it will be based on the principles, expectations and methodology of the Enforcement Management Model (EMM) produced by the Health and Safety Executive (HSE), which is considered national best practice.

### **2.4 Transparency**

Transparency means helping individuals, businesses and other undertakings to understand what is expected of them and what they should expect from the Authorities. It also means making clear to business, other undertakings and individuals not only what they have to do, but also what is not expected of them. This involves distinguishing between enforcing statutory requirements and providing goodwill advice.

### 2.5 Accountability

All Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

- [North Wales FRS Complaints Procedure](#)
- [Mid and West Wales FRS Complaints Procedure](#)
- [South Wales FRS Complaints Procedure](#)

***The Regulators' Code 2014 section 2.5 states:***

*"Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator."*

***And in section 2.6 states***

*"Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate."*

### 2.6 Helpfulness

The Authorities are of the opinion that prevention is better than cure and that their role therefore actively involves working with business, especially small and medium-sized businesses, to advise and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide contact points and telephone numbers for further communications dealings with them and will encourage businesses to seek advice/information. We will also strive to co-ordinate our services effectively to minimise unnecessary overlaps and time delays.

***The Regulators' Code 2014 section 5.1 states:***

*"Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself."*

### 3. Service Standards

A service standard is a public commitment to a measurable level of performance that customers can expect under regular day-to-day operations. Service standards are an important element of management excellence; they help clarify expectations for both those we regulate and employees of the Authorities. They enable performance management, and support customer satisfaction. Each Authority's service standards are published on its external website.

- [North Wales FRS Service Standards](#)
- [Mid and West Wales FRS Service Standards](#)
- [South Wales FRS Service Standards](#)

**Section 6.1 of the Regulators' Code 2014 states:**

*"Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them"*

### 4. The Human Rights Act 1998

The Authorities are public authorities for the purposes of the [Human Rights Act 1998](#). We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is made to the right to a fair trial and the right to respect for private and family life, home and correspondence.

### 5. Data Protection Act 1988

Where there is a need for the Authority to share enforcement information with other agencies, we will follow the provisions of the [Data Protection Act 1998](#).

**The Regulators' Code 2014 section 4.2 states:**

*"When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication."*

## **6. The Code for Crown Prosecutors**

When deciding whether to prosecute the Authorities will have regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

### **6.1 Evidential Test**

"Is there enough evidence against the defendant?" When deciding whether there is enough evidence to prosecute, Authorities will consider what evidence is reliable and can be used in court. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

### **6.2 Public Interest Test**

"Is it in the public interest for the case to be brought to court?" Authorities will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the section Enforcement Actions available to the Authorities.

## **7. The Regulatory Enforcement & Sanctions Act 2008**

[The Regulatory Enforcement and Sanctions Act 2008](#), as amended, established the Primary Authority Scheme (PAS). Authorities will comply with the requirements of the Act when they are considering taking enforcement action against any business or organisation that has a Primary Fire Authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## 8. Conduct of Investigators

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Authority:

- [The Regulators' Code 2014](#)
- [Police and Criminal Evidence Act 1984](#)
- [Criminal Procedure and Investigations Act 1996](#)
- [Regulation of Investigatory Powers Act 2000](#)
- [Criminal Justice and Police Act 2001](#)
- [Human Rights Act 1998](#)
- [Proceeds of Crime](#)
- [Powers Of Entry code of practice](#)

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised inspectors will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

## 9. The Regulatory Enforcement & Sanctions Act 2008

### 9.1 Compliance advice, guidance and support

The Authorities use compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called a 'Notification of Deficiencies') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Authorities recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and the Authorities will take such advice into account when considering the most appropriate enforcement action for them to take. They may discuss any need for compliance advice and support with the primary authority.

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Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Authorities recognise that there is likely to be an on-going need for compliance advice and support, to prevent further breaches.

### 9.2 Agreed action plans

The Authorities may accept voluntary undertakings ('Agreed Action Plans') that breaches will be rectified and/or recurrences prevented. The Authority will take any failure to honour 'Agreed Action Plans' very seriously and enforcement action is likely to result.

### 9.3 Statutory (legal) notices

In respect of breaches, the Authorities have powers to issue statutory notices. These include:

- Enforcement Notices,
- Prohibition Notices,
- Alterations Notices.

Such notices are legally binding. Failure to comply with a statutory notice is a criminal offence under [Article 32](#) of the Order and the Authorities will consider prosecution.

An Enforcement Notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring.

A Prohibition Notice may also prohibit or restrict the use of premises where the Authorities are of the opinion that the use involves, or will involve a serious risk.

An Alterations Notice will require persons in control of premises to notify the Authorities before making certain changes. The details will be explained in the notice.

Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

#### ***The Regulators' Code 2014 section 2.3 states:***

*"Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated."*

Some notices issued in respect of premises may be affixed to the premises.

### **9.4 Public register of notices**

In accordance with the requirements of the Environment and Safety Information Act 1988 details of notices served will be made available on a public register accessed via each Service's website.

### **9.5 Simple caution**

The Authorities have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Authorities will consider prosecution.

Simple cautions will be used in accordance with Home Office and other relevant guidance.

### **9.6 Prosecution**

The Authorities may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as agreed action plans or statutory notices have failed to secure compliance. When deciding whether to prosecute the Authorities have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Authorities are satisfied that they have sufficient evidence to provide a realistic prospect of conviction against the defendant(s). Before deciding that prosecution is appropriate, the Authorities will consider all relevant circumstances carefully and will have regard to the public interest criteria described in the Code for Crown Prosecutors.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

## 10. Relevant Documents

- [Regulatory Reform \(Fire Safety\) Order 2005](#)
- [Welsh Fire and Rescue National Framework 2012 Onwards](#)
- [Legislative and Regulatory Reform Act 2006](#)
- [Regulators Code 2014](#)
- [Human Rights Act 1998](#)
- [Data Protection Act 1998](#)
- [Code for Crown Prosecutors](#)
- [Regulatory Enforcement and Sanctions Act 2008](#)
- [Police and Criminal Evidence Act 1984](#)
- [Criminal Procedure and Investigations Act](#)
- [Regulation of Investigatory Powers Act 2000](#)
- [Criminal Justice and Police Act 2001](#)
- [Human Rights Act 1998](#)
- [Environment and Safety Information Act 1998](#)
- [Building Act 1984](#)
- Guidance and associated codes of practice for all of the above

## 11. Review of Policy

This policy shall be reviewed:

1. annually, or
2. following receipt of new information, or
3. upon implementation of new agreements which may affect the policy

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