

Circular number	7/2010	Date issued	8 March 2010
This circular is	For information	No response required	
This circular is	Relevant to the National Framework		
Status	This circular provides an update on new regulations being laid under article 24 of the Regulatory Reform (Fire Safety) Order 2005 (the FSO) and publication of revised guidance on the determination process (under article 36 of the FSO).		

Fire Safety Policy Team Update

Issued by:

Rowan Chapman

Fire Safety Policy Team

Addressed to:

**The Chair of the Fire and Rescue Authority
The Chief Executive of the County Council
The Clerk to the Fire and Rescue Authority
London Fire Commissioner
The Chief Fire Officer**

Please forward to:

Officers responsible for fire safety

Summary

This Circular draws FRAs attention to the laying of new regulations under article 24 of the FSO - the Fire Safety (Employees' Capabilities) (England) Regulations 2010 (SI 2010/471). These will come into force on 6 April. It also alerts FRAs to the publication of updated guidance on the determination process under article 36 of the FSO.

For further information, contact:

**Rowan Chapman
Communities and Local Government
Zone 3/D1 Eland House
London
SW1E 5DU**

Direct line **0303 444 2874**

Fax

E-mail Rowan.chapman@communities.gsi.gov.uk
John.Johnstone@communities.gsi.gov.uk

Website www.communities.gov.uk

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1.0 Fire safety (Employees' Capabilities) (England) Regulations 2010

- 1.1 A minor gap in the implementation of the Framework Directive on Health and Safety of Workers 89/391/EEC (HSWA) has come to CLG's attention, which needs to be rectified.
- 1.2 This Directive requires employers to take into account the capabilities of their workers as regards health and safety when entrusting tasks to their employees. This includes fire safety.
- 1.3 The gap occurred because, in order to avoid the FSO provisions overlapping with the HSWA, article 47 of the FSO disapplied the obligations in the HSWA and any regulations made under it to which the FSO applies. This included the obligations in relation to workers' capabilities in the Management of Health and Safety at Work Regulations 1999, so far as they related to fire safety.
- 1.4 Therefore, CLG need to explicitly re-apply the regulation in respect of employers taking into account the capabilities of their staff as regards fire safety tasks.
- 1.5 The making of these regulations is a technical exercise to ensure that the EU legislation has been properly transposed into English fire safety law. Not to do so may have resulted in EU infraction proceedings.
- 1.6 Employers already have to comply with the regulation under wider health and safety legislation and the requirements of the new regulations are already implicit in the FSO. These regulations simply re-impose a duty which was already on employers prior to the implementation of the FSO and with which employers should be familiar.
- 1.7 We held a formal consultation exercise over the summer of 2009, whereby our preferred option to make new regulations was widely endorsed. The results were published on the CLG website on 21 December 2009 - you can find the full report at:

<http://www.communities.gov.uk/publications/fire/consultationframeworkrro>

- 1.8 The Fire Safety (Employees' Capabilities) (England) Regulations 2010 were laid in Parliament on 4 March and will come into force on 6 April 2010. You can find a link to the regulations and Explanatory Memorandum at: http://www.opsi.gov.uk/si/si2010/uksi_20100471_en_1

2.0 Publication of revised guidance on the determination process under article 36 of the FSO

- 2.1 We have reviewed and updated the guidance available on the determination process under article 36 of the FSO. Article 36 provides for enforcers and 'responsible persons' to approach the Secretary of State for a determination where they agree that there is a failure to comply with the FSO but cannot agree on an appropriate technical solution to remedy the breach.
- 2.2 Guidance was first published in October 2007. Since then, we have dealt with two determination requests. In our discussions with the FRS we found that enforcers would like further information on this process.
- 2.3 In the light of this and our experience to date, we have reviewed the guidance and amended it to offer greater clarity on when it may be appropriate to approach the Secretary of State to consider a determination request, and on the role of the Chief Fire and Rescue Adviser in the process.

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2.4 You can find the guidance on the CLG website at:

<http://www.communities.gov.uk/publications/fire/reviseddetermination36rro2005>

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