



LONDON FIRE BRIGADE

London Fire Brigade Headquarters
169 Union Street London SE1 0LL
T 020 8555 1200 F 020 7960 3602
Textphone 020 7960 3629
london-fire.gov.uk

Freedom of Information request reference number: 7433.1

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Request:

1. *Are fire safety audits a mandatory requirement before deployment of a prohibition notice?*
2. *Are such audits matters of public record?*
3. *In what legal conditions fire authority's are excused in quantifying the existence of audits pursuant to the freedom of information act?*
4. *In what legal conditions fire authority's are excused in the supply of such audits pursuant to the freedom of information act?*

Response:

Please see my response to each of your queries in turn below:

1. *Are fire safety audits a mandatory requirement before deployment of a prohibition notice?*

No, the LFB may have visited the premises for a number of reasons prior to the service of a Prohibition notice. An audit is not necessary however an inspection of the premises with consideration given to the risk aspects is usually undertaken. I have attached a copy of LFB Fire Safety Information & Guidance Note 309: 'Article 31 Prohibition/Restriction Notices - Regulatory Reform (Fire Safety) Order 2005 (as amended)'.
Article 31 Prohibition/Restriction Notices - Regulatory Reform (Fire Safety) Order 2005 (as amended)

Details of when a prohibition order is served can be found on Page 4 of 23, Section 4: 'When to serve a prohibition notice'.

2. *Are such audits matters of public record?*

If a prohibition notice is issued by the LFB, then details of the notice are published on the LFB website. This information can be found using the following link:

<https://www.london-fire.gov.uk/community/public-notices/>

If the prohibition notice was issued following a Fire Safety Audit then the audit report itself is not made public (see below for more information).

3. *In what legal conditions fire authority's are excused in quantifying the existence of audits pursuant to the freedom of information act?*

N/A - The LFB would confirm the existence of an audit under the freedom of information act.

4. *In what legal conditions fire authority's are excused in the supply of such audits pursuant to the freedom of information act?*

The LFB freely provide the copies of broadly compliant Fire Safety Audits and the outcomes of non-compliant Fire Safety Audits (including any notices issued) under the freedom of information act.

Where a Fire Safety audit results in a notice being issued by the LFB, the audit reports themselves are exempt from release under the FOIA provisions under [Section 31 of the FOIA - law enforcement](#) (Section 31(1)(g) combined with 31(2) (a) and 31(2) (c)).

When the LFB identifies any safety concerns, we make this information available to the public by supplying copies of any informal notification of fire safety deficiencies (NOD) issued, and through access to [the public register](#) of any formal enforcement action. We clearly understand that there is public interest and concern about knowing about the fire safety of the buildings in which people live, work or visit however we need to maintain a balance between the public interest in safety and the Brigade's ability to work with responsible persons in a safe space where honest, frank and meaningful discussions can take place.

It is important that enforcing authorities are assisted in their investigations if witnesses and those responsible for compliance with regulations are willing to cooperate with the investigation on a voluntary basis and investigators are able to take full contemporaneous notes (that are recorded on the audit forms) and enter in discussions (either verbally, or by correspondence) with those involved to enable them to explore all aspects of the case and then arrive at a decision as to the appropriate action to take.

Other materials (including the audit form itself, email correspondence and detailed notes), documents (such as documents provided to us by the responsible person for the building) and other fire safety information held by the Brigade are also exempt from access via the FOIA provisions. Again, we consider these to be exempt under [Section 31 of the FOIA \("law enforcement" – Section 31\(1\)\(g\) combined with 31\(2\) \(a\) and 31\(2\) \(c\)\)](#).

We are of the view that the correct balance between the public interest in building safety and our ongoing regulatory involvement lies in making information about enforcement action available (formal or informal) to those that request it, but in withholding the supporting information and evidence gathered during regulation activities.

We have dealt with your request under the Freedom of Information Act 2000. For more information about this process please see the guidance we publish about making a request [on our website](#).

Fire Safety Information & Guidance Note

FSR Ref:

Article 31 Prohibition/Restriction Notices - Regulatory Reform (Fire Safety) Order 2005 (as amended)

FSIGN 309

Old Inst.: FSR:D020:a3

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300 Series: Enforcement

Summary

The London Fire Commissioner (the Commissioner) is the fire and rescue authority for London. The Commissioner is responsible for enforcing the Regulatory Reform (Fire Safety) Order 2005 (as amended) (The Order) in London.

This Note is intended for internal use, providing information and guidance on the drafting and service of Prohibition Notices under Article 31.

This Note is one of a series produced by Fire Safety Regulation HQ Policy Groups to provide additional advice and guidance to officers and Fire Safety Teams on various subjects related to their role.

Where appropriate this Note should be used for learning and staff development purposes.

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1 Introduction

- 1.1 This reference note has been produced to assist officers in the drafting and service of Prohibition Notices under Article 31 of the Regulatory Reform (Fire Safety) Order 2005 (as amended) (hereafter referenced as 'The Order').
- 1.2 Prohibiting or restricting the use of premises is the most stringent direct enforcement power available to the Commissioner and is not to be used lightly. Other than where the service of a notice is preventative (e.g. to prevent a large scale public event taking place in unsuitable premises), any premises which poses a level of risk that requires prohibition or restriction is likely to have significant failures to comply with The Order. All Article 31 cases involving premises in use (i.e. non-preventative cases) should be regarded as potential prosecution cases and evidence should be gathered from the outset.
- 1.3 There are a number of points that should be observed by fire authorities when preparing a Notice in order to comply with the requirements of the legislation and to ensure that the Notice will withstand scrutiny if challenged in a Court of Law.
- 1.4 The content of this note is intended to clarify the relevant parts of the legislation; to highlight problem areas; advise how problems may be overcome; and to explain the necessary procedures that should be followed when completing and serving a Notice.
- 1.5 Attached as Appendix 1 is a copy of Article 31 of The Order and relevant extracts from Article 32.

2 Definitions

- 2.1 For the purpose of this note the definitions of "Responsible Person" and "Relevant Person" are those defined in Articles 2 and 3 of The Order.

Prohibition or Restriction Notice?

- 2.2 Article 31 of The Order gives the Commissioner the power to prohibit or restrict the use of premises. All notices served under Article 31 are classed as Prohibition Notices. It is not necessary to differentiate between prohibition and restriction in the text of the Notice itself but a differentiation must be made for statistical return purposes by recording the nature of the Notice as either job step 80.00 (prohibition) or 80.10 (restriction) under job FS08.
- 2.3 The definition of prohibition and restriction to be used for deciding on job step 80.00 or 80.10 derives from the Fire Safety Integrated Risk Management Plan Returns provided to the Department for Communities and Local Government. For these purposes Prohibition/Restriction Notices may be defined as follows:
 - A Prohibition Notice prohibits the use of the whole of a premises or prohibits all uses;
 - A Restriction Notice restricts the use of all or part of premises to specific activities (e.g. storage only) or restricts the numbers of persons who can resort to the whole or part of premises (e.g. maximum of 50 persons in function room on 1st floor).

3 Primary Authority Partnerships

- 3.1 Where possible the officer issuing a Prohibition/Restriction notice should consult the Primary Authority Register on the Better Regulation Delivery Office website, to determine if a Primary Authority Partnership is in place.

- 3.2 The requirement to notify a Primary Authority of proposed enforcement action does not apply where a compliance issue is identified that requires immediate action in order to prevent harm. This exclusion allows the enforcing authority to take enforcement action immediately. In these circumstances retrospective notification to a Primary Authority is required. See FSIGN 610 for further information.

4 When to serve a prohibition notice

- 4.1 Article 31 states that the Commissioner may serve a Notice where it is considered that;

"Use of the premises involves or will involve a risk to the relevant persons so serious that use of the premises ought to be prohibited or restricted."

"The matters relevant to the assessment of the risk to relevant persons include anything affecting their escape from the premises in the event of fire."

- 4.2 Before serving a Notice under Article 31 of The Order officers will generally need to consider three aspects of fire risk, each of which should be substantially deficient in order to assess whether, overall, the risk is sufficient to warrant action under Article 31. While the circumstances of each case must be independently risk assessed, as a general test of appropriateness, it is expected that deficiencies should be present in each of the three aspects below.

- (a) (Note: Whilst the tests set out below are intended to assist officers when making a judgement as to whether it is appropriate to issue a prohibition notice, there may be circumstances where all three tests cannot be met and yet it is appropriate to issue a notice. An example of this would be of a complex and highly fire engineered building where a catastrophic failure of one or more of the fire safety systems within the building places relevant persons at such a risk in the event of fire that the use of the premises should be restricted or prohibited)

(1) Means of escape inadequate – examples:

- Lack of escape routes or routes compromised by serious passive fire safety deficiencies.
- Escape routes unlikely to remain tenable for use in a fire due to a combination of anticipated fire growth rate and the awareness or ability of occupants to use the escape routes sufficiently quickly.
- Capacity of the escape routes / stairs / exits insufficient for the number of occupants who are likely to need to use them.
- Excessive travel distances (With no compensatory features such as smoke detection (or, if provided, it is not in working order)) .

(2) Management of ignition sources – examples:

- Use of naked flames for heating and cooking.
- Electrical installation or equipment in poor condition, overloaded, inadequately ventilated or showing signs of scorching.
- Evidence of burns on carpets or furniture from smoking etc.
- Heat producing processes.
- Record or likelihood of arson.
- Generally poor housekeeping – combustible materials likely to come into contact with an ignition source.

(3) Mechanisms for fire development and spread of combustion products – examples:

- Significant fire loading.
- Fire likely to develop unnoticed.
- Lack of separation by fire resisting walls / doors.
- Potential for rapid fire growth due to building contents or how combustibles are used or stored.
- Large areas with flammable surfaces particularly where impinging on escape routes.
- Presence of voids / unprotected vertical shafts.

For the purposes of issuing a Prohibition Notice these deficiencies must be recorded (see paragraphs 3.4 and 6.2 below) under one of the following Articles for later use in defending any appeal or as evidence in any prosecution:

- Article 8 Duty to take general fire precautions.
- Article 12 Elimination or reduction of risks from dangerous substances.
- Article 13 Fire detection and warning.
- Article 14 Emergency routes and exits.
- Article 15 Procedures for serious and imminent danger and danger areas.

4.3 When appraising risk under the above headings, Officers are reminded that falling short of a benchmark standard (e.g. Building Regulations, British Standards, Guidance for Responsible Persons etc.) will not necessarily, in itself, constitute sufficient risk to warrant Article 31 (e.g. a solid door and partition albeit non-fire rated, will offer a degree of protection from fire/combustion products). In order to document the appraisal of the risk the attending Senior Fire Safety Officer (SFSO) must ensure that the S200_FS20_01 Senior Fire Safety Officers Report Form is completed as far as is reasonably practicable in respect of the Articles mentioned in paragraph 3.3 above in all potential Article 31 cases. The report must be used to confirm the deficiencies and overall risk and may be used in evidence in any subsequent prosecution or appeal.

4.4 Prohibition Notices must be issued as soon as a serious risk to relevant persons in case of fire is discovered in accordance with the provisions of this Fire Safety Regulation Note. However, if when carrying out a follow-up inspection under another procedure it is found that the risk has increased, or a re-evaluation of the risk indicates that the risk is higher than was initially assessed then, where appropriate, a Prohibition Notice may be served at this latter time providing that the case for doing so can be justified.

5 Premises on which a notice may be served

5.1 Article 31 of The Order applies to all premises except those listed in Article 6.

5.2 A Notice can also be applied to premises awaiting imminent occupation, such as a large scale public event (whether or not it is licenced/authorised) where the risk occurs on occupation. In such circumstances the prohibition notice should be amended as follows:

Delete the sentence "*In the opinion of the Commissioner the risk of serious personal injury to relevant persons is/will be ~ imminent. The prohibition or restriction specified in this notice has immediate effect.*" And inset:

"The prohibition or restriction specified in this notice has effect from (INSERT DATE)"

- 5.3 A Notice cannot be applied to a "house which is occupied as a single private dwelling". This expression does not include flats or bedsits in a block or in a house converted to flats/flatlets. For such properties Article 31 specifically extends coverage of The Order to allow Prohibition Notices to cover the whole property including private domestic elements. If in doubt guidance should be sought from the Central Regulatory and Enforcement Group or Legal and Democratic Services. .
- 5.4 From time to time the issue arises as to whether a prohibition notice can be served on a premises where the persons placed at serious risk are, or appear to be, squatters. Under Article 31 a prohibition notice can only be served where the use of the premises involves or will involve a serious risk to relevant persons.

A relevant person is defined in Article 2 as, and with regards to Article 31, "*any person (including the responsible person) who is or maybe lawfully on the premises*". Squatters will not be, in most cases, lawfully on the premises. They are not, therefore, relevant persons and so a prohibition notice can not be served on a premises which is occupied solely by squatters.

However, there will be occasions where officers identify that the responsible person is aware that the premises is occupied by squatters and has taken no action to remove them. The responsible person may even be content to let the squatters remain on the premises. In such cases the test of 'adversarial possession' (which makes their presence unlawful) is unlikely to be met. Where that is the case (i.e. there is no adversarial argument about occupation between the landlord and the residents) the 'squatters' presence will not usually be unlawful and they should be regarded as relevant persons.

Even where it is established that the premises is being used by squatters, officers should consider and take into account other persons who might legitimately be able to access the premises, such as the owner of the premises or others acting for them, and whether the conditions in the premises place them at serious risk in the event of fire. It is recognised that application of The Order to this issue is not straightforward and each case will need to be considered on its merits.

When officers are considering the issue of a prohibition notice on a premises that is occupied by squatters, advice should be sought from the Central Regulatory Enforcement Group or Legal and Democratic Services.

6 Powers of entry

- 6.1 Article 27 of The Order gives Inspecting Officers powers of non-forcible entry into premises to which The Order applies. These powers include, by virtue of Article 31(10), power of non-forcible entry to domestic premises other than those which consist of a house which is occupied as a single private dwelling (e.g. the power applies to flats and bedsits). Power of entry to domestic premises should only be invoked where the Inspecting Officer has reasonable grounds to consider that Article 31 conditions may exist in the domestic premises (e.g. an allegation that the occupier is storing and using significant quantities of highly flammable materials – such as petrol).

7 Procedural requirements

- 7.1 If dangerous conditions are reported or discovered either by station personnel on a visit or operational incident, or by an Inspecting Officer during a Fire Safety Regulation inspection, the attendance of an SFSO must be requested via RMC (alternatively, during office hours Inspecting

Officers may contact their own Team Leader). Personnel are to remain on site until the SFSO arrives.

- 7.2 The SFSO should inform an on-duty Deputy Assistant Commissioner (DAC) of the potential Article 31 action via RMC. On arrival, the SFSO will assist in a joint inspection of the site with the Inspecting Officer or station personnel who will identify those areas which give cause for concern.
- 7.3 If the SFSO considers the risk to persons in case of fire is so serious that action under Article 31 is justified, they must contact the on-duty DAC who will, if they consider it necessary, make an immediate inspection of the premises with the Inspecting Officer / SFSO. An aide-memoire has been produced as Appendix 5 of this document to assist DACs if required.
- 7.4 In all cases an SFSO report, S200_FS20_01, must be completed. This will provide evidence of the reasons for service of a Notice.
- 7.5 During office hours as soon as it is known that a Prohibition Notice is to be issued an FS08 job should be raised (see FSR:D020:a1).
- 7.6 A specimen copy of a Prohibition Notice with instructions for completion and 'model text' is attached as Appendixes 3 and 4.
- 7.7 The following points should be noted and followed so far as is reasonably practicable once it has been decided to issue a Notice:
 - If the Responsible Person is present they should be informed during the inspection as to the nature of the serious risk to persons and of the main steps plus the immediate action that should be taken to reduce the risk to persons. If the Responsible Person is not immediately available, the persons present at the time of the inspection should be informed of the nature of the risk and impending enforcement action.
 - When the Responsible Person or a person mentioned in Article 5(3) is present their attention should be drawn to the provisions of Article 31 and they should be advised that the use of the premises should be discontinued or restricted (as the case may be) until the steps considered necessary to reduce the risk to a more reasonable level have been taken. They should also be advised that where structural measures have to be undertaken, the local building control authority must be contacted before the work is undertaken and that further work may be necessary to achieve compliance with The Order.
 - When informing the responsible person or person mentioned in Article 5(3) of the need to prohibit or restrict use of the premises under Article 31 it is not necessary for a formal caution to have been given. However, if offences under The Order appear to have been committed by the person being informed, Procedure F must be followed (see FSR:D025:a1).
 - In all cases where action under Article 31 is to be taken, the relevant Prohibition Notice together with the schedule of requirements (if used), must be presented for signature by a DAC or above.
 - Refer to aide-memoire Appendix 5.
- 7.8 On completion of the necessary paperwork the notice, together with the schedule of requirements (if necessary) is to be delivered by hand to the responsible person, or occupier if the responsible person is not present. If the responsible person is not present a copy of the notice together with any accompanying documentation should be sent to the responsible person as soon as is reasonably practicable (also see sections 7 and 8 about service of notices).

- 7.9 After issuing a prohibition notice out of hours, notification of its issue should be sent to the RRO and the FSR-AdminSupport mailboxes as soon as is reasonably practicable .
- 7.10 A copy of the notice should be sent to the AC (FSR) and Director of Operations. Team Leaders should ensure that a brief summary of the action taken in issuing the notice is included in a covering note. The summary is to include:
- A Brief description of the premises (size, use, occupancy, any unusual features),
 - Reasons for Brigade involvement (FS01 inspection, request from another authority, officer at incident, complaint etc.),
 - Any relevant legislative issues (premises subject to alterations notice, licensed premises etc.),
 - Any special/unusual matters (notice pinned to door etc.).
- 7.11 A copy should also be forwarded to Legal Department.
- 7.12 Notification must also be sent to the local Station Manager. The notification will be made by the use of form SFS_A020_a2a.
- 7.13 As soon as the notification of an issue of a prohibition notice is received by the Fire Safety Area team an FS08 job must be opened. An Enforcement Notice should be issued and, where necessary, a full audit should be carried out.

8 Issuing a prohibition notice

- 8.1 When issuing a notice under Article 31 the Commissioner is required to ensure that certain details are correct and will withstand scrutiny if challenged in a court of law. These are:
- that reasonable attempts have been made to identify the Responsible Person or other person mentioned in Article 5(3);
 - where the Responsible Person or person mention in Article 5(3) is identified in the notice, the correct person is named;
 - identification of the premises to which the Notice relates;
 - the Responsible Person or other person mentioned in Article 5(3) to be informed that the Commissioner is of the opinion that the use of the premises involves or will involve a serious risk to relevant persons;
 - the Responsible Person or other person mentioned in Article 5(3) to be informed of the circumstances giving rise to the serious risk and issue of the Notice;
 - the Responsible Person or other person mentioned in Article 5(3) to be informed of the use of the premises which is prohibited or restricted under the Notice, and the extent of the prohibition/restriction Notice;
 - to state when the Notice is to take effect, either immediately or at a predetermined date and time in the near future;
 - the Responsible Person or other person mentioned in Article 5(3) to be informed that the Notice remains in force unless withdrawn or cancelled;
 - the Responsible Person or other person mentioned in Article 5(3) to be informed as to the nature of the works required to comply with the Notice.

Use of Schedules

- 8.2 The Notice allows for the inclusion of 'steps to be taken' in order to reduce the risk to the point where there is no need for the Prohibition Notice. Any further risk-reduction must be achieved through the use of other provisions of The Order such as service of an enforcement notice.
- 8.3 In practice, schedules should only be used where the steps to be taken to reduce the risk below Article 31 levels will also result in compliance with the relevant articles of The Order (i.e. no further works will be required in respect of this aspect of the general fire precautions). In other circumstances a schedule should not be used. Whilst The Order does allow for a schedule to be attached to the prohibition notice, in reality this type of notice is rarely used. However, should the circumstances at the premises indicate that it is appropriate to attach a schedule, the text included with paragraph 8.4 below should be added to the notice.
- 8.4 The measures contained in the schedule which forms part of this notice are those that the Commissioner considers have to be taken to remedy the current serious nature of said matters. Further works or measures may be required to achieve compliance with The Order. Where necessary, these will be detailed in a separate enforcement notice. There may be alternative means of remedying the said matters, subject to prior agreement with the Commissioner. Any such proposals must be submitted to the Commissioner with:
- (i) *a copy of the fire risk assessment; and*
 - (ii) *a summary of the changes you propose to make to the existing fire precautions in order to remedy the specific failures.*

The proposals should not be implemented until they have been agreed to offer an acceptable level of safety.

9 Who to serve the notice on

- 9.1 The Notice should be addressed to and served on the Responsible Person or other person mentioned in Article 5(3), with copies of that Notice being served on any others who need to be made aware of it. This could include, for example, the owner, if different from the Responsible Person, the residents of rooms in HMOs etc.

It is essential that the identity and address for service of the Notice is established from the outset to ensure that the officer can be certain with whom to deal (for example, if a company is trading under a business name, it is essential that an officer establishes from the outset that they are dealing with a Director, Company Secretary, Manager or some such sufficiently responsible person whose statements may be regarded as those of the company. It should also be ensured that they speak for the company).

10 Service of the notice

- 10.1 If the name or address of the Responsible Person cannot be ascertained, Article 48 of The Order (see Appendix 2) permits the officer serving the Notice to do so in the following way: address the Notice to "The Responsible Person for" followed by the name and address of the premises (if there is no recognised address, describe the premises). If you think you have the correct name for the Responsible Person but are not entirely sure about it, serve a notice on the Responsible Person (using the name which you have) and a second notice, addressed simply to "The Responsible Person", as provided in this paragraph.
- 10.2 The notice must be delivered to the premises and either:-

- delivered to a responsible individual resident or person appearing to be resident on the premises (this would include for example a manager in commercial premises); or
- secured to a conspicuous part of the premises for all to see.

10.3 The Order does not permit service by post where the Responsible Person cannot be identified.

10.4 Further information on the correct service of Notices can be found in FSR:A010:a3 Standards for addressing letters, notices and invoices.

11 Monitoring and compliance

11.1 The Team Leader, in conjunction with the Area Fire Safety Manager (AFSM), will:

- Set the monitoring inspection period for checking compliance with the notice
- Determine the frequency of monitoring inspection visits to the premises.
- Carry out regular monitoring to ensure that prohibition notices are being regularly checked for compliance by their team.

11.2 It will be for the Team Leader to determine the appropriate frequency of monitoring inspections, recognising that prohibition notices may require different monitoring arrangements, but a typical monitoring program would be as follows:

- 1st inspection within the first week of the notice being issued.
- 2nd inspection within 6 weeks of the notice being issued
- Further visits within a year of the notice being issued to be on a quarterly basis.
- Beyond a year the Team Leader is to decide whether further inspections should be every 12 or 18 months.

11.3 If monitoring (as described in paragraph 11.2) is scheduled to occur outside of office hours the Peak Activity Team (PAT) will perform these duties.

11.4 Non compliance with a Notice is an offence. If non compliance is discovered by station based personnel the attendance of a SFSO must be requested. If non compliance is discovered by fire safety staff attendance of the relevant Team Leader must be requested. The SFSO / Team Leader will consider taking legal action leading to prosecution. See FSR:D025:a1 (Procedure F: Problems and Prosecutions). Legal and Democratic Services or Central Regulatory Enforcement Group should be contacted during normal office hours for advice.

11.5 Any person(s) who continues to use areas prohibited/restricted by a Notice after its issue commits an offence under Article 32 of The Order. Consideration should be given to asking for police assistance where occupiers refuse to vacate the premises if required to do so under the Notice. However, this should only be considered where the premises or part of the premises upon which the notice is served can be secured.

11.6 Where a prohibition notice has been served on the Responsible Person or occupier of the premises, it will remain in force until such time as it has been complied with. The results of all monitoring visits will be notified to the responsible person using letter FS08_07 or, where the notice is to be amended due to reduction of risk levels, an FS08_08. When compliance has been achieved, a record should be made on the premises file that the risk has been reduced to an acceptable level and therefore that the Commissioner is satisfied that the Notice has been complied with. The Responsible Person/occupier should be notified accordingly and the public

register updated. The Notice will remain pertinent to the circumstances that gave rise to its service and will remain in force but, while complied with, will have no material effect.

11.7 Should it be found on later inspection that remedial measures put in place to comply with a prohibition notice (and/or enforcement notice) have been allowed to deteriorate to a level that prohibition or restriction is again required, a new notice should be served. The question of whether to initiate proceedings in respect of the original notice should be referred to the Central Regulatory Enforcement Group at HQ for consideration in discussion with Legal and Democratic Services.

11.8 An Article 31 Notice should only be withdrawn in very exceptional circumstances e.g.:

- it was issued in error; or
- following consultation with Central Regulatory Enforcement Group. .

When a Prohibition Notice is withdrawn, an FS08_07 letter should be sent to the responsible person.

12 Consideration for lifting or amending the notice

12.1 The Order only allows the Commissioner to issue or withdraw a Notice. The Notice can be withdrawn when it becomes apparent that the Notice was issued in error. The Order is silent on the action the Commissioner can take when the risk has been reduced to such a level that there is no longer a need for the requirements of the Notice to be complied with. In such circumstances the Notice remains in place but, for all practical purposes it ceases to have effect. However, the responsible person may request that they receive written confirmation that the Notice has ceased to have effect. Any such application must be made in writing before it is actioned. Although The Order does not use this term the Commissioner is considering whether to "lift" the Notice as it has, in effect, been complied with.

12.2 On receipt of such an application the relevant premises should be revisited by an Inspecting Officer to check whether the remedial work has been carried out as stated and the level of risk to relevant persons that still remains.

12.3 If the level of remedial work has resulted in a position where prohibition or restriction of use is no longer necessary, FS08_07 letter should be sent to the responsible person (copied to the premises concerned if a different address) stating that the Notice has been complied with but that any further remedial works identified in an enforcement notice (if served) must still be complied with. The letter is to be kept with the Notice. The compliance letter must be signed by a signatory (Inspecting Officer or Team Leader) in the name of the AC (FSR).

12.4 If the remedial works carried out have resulted in a lessening of risk to relevant persons, consideration can be given to reducing the level of prohibition or restriction (e.g. from complete prohibition of use to a restriction on the type of use such as 'not to be used as sleeping accommodation'). The position should be verified by an SFSO. Once the position has been agreed, FS08_08 letter should be sent to the responsible person (copied to the premises concerned if a different address) stating that the remedial work carried out will allow a reduction in the level of prohibition imposed and that a new notice reflecting this is enclosed. A new Prohibition notice should be prepared and enclosed with the letter. The letter and new notice must be signed by an authorised Officer who has power to sign Article 31 notices. The original notice will not be withdrawn but the file and the public register entry should be noted with "partial compliance, Notice replaced by Notice ... (insert reference number and date)".

13 Electronic Article 31 package

13.1 If it is necessary to access Article 31 procedural documents outside normal office hours they can be obtained electronically. They are available on Hotwire using this [link](#).

14 Access to fire safety database out of office hours

14.1 The decision on whether it is necessary to serve a Prohibition Notice should be made on the evidence that exists in the premises at the time of audit/attendance. Where practicable the fire safety computer system (FARYNOR) should be checked for any existing notices that have previously been served on the premises. However, service of a Notice must not be delayed where this is not possible.

15 Policy review

15.1 This policy affects and must be reviewed in conjunction with:

- S300:FS08 Procedure - Prohibition and restriction notices under article 31
- FSIGN 117 - Guidance on the maintenance of Registers for relevant notices
- FSIGN 208 - Role and Responsibility of a Senior Fire Safety Officer
- S300_FS08a Procedure - Monitoring inspections under article 31

16 Consultation

16.1 This policy must be reviewed in consultation with:

- Service Delivery
- Operations
- Legal and Democratic Services.

Appendix 1 - Article 31 & extracts from Article 32 Regulatory Reform (Fire Safety) Order 2005 (as amended)

ARTICLE 31 REGULATORY REFORM (FIRE SAFETY) ORDER 2005 (AS AMENDED)

- 1 If the enforcing authority is of the opinion that use of premises involves or will involve a risk to relevant persons so serious that use of the premises ought to be prohibited or restricted, the authority may serve on the responsible person or any other person mentioned in article 5(3) a notice (in this Order referred to as "a prohibition notice").
- 2 The matters relevant to the assessment by the enforcing authority, for the purposes of paragraph (1), of the risk to relevant persons include anything affecting their escape from the premises in the event of fire.
- 3 A prohibition notice must—
 - (a) state that the enforcing authority is of the opinion referred to in paragraph (1);
 - (b) specify the matters which in their opinion give or, as the case may be, will give rise to that risk; and
 - (c) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the specified matters have been remedied.
- 4 A prohibition notice may include directions as to the measures which will have to be taken to remedy the matters specified in the notice and any such measures may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the matters.
- 5 A prohibition or restriction contained in a prohibition notice pursuant to paragraph (3)(c) takes effect immediately it is served if the enforcing authority is of the opinion, and so states in the notice, that the risk of serious personal injury is or, as the case may be, will be imminent, and in any other case takes effect at the end of the period specified in the prohibition notice.
- 6 Before serving a prohibition notice in relation to a house in multiple occupation, the enforcing authority shall, where practicable, notify the local housing authority of their intention and the use which they intend to prohibit or restrict.
- 7 For the purposes of paragraph (6)—

"house in multiple occupation" means a house in multiple occupation as defined by sections 254 to 259 of the Housing Act 2004, as they have effect for the purposes of Part 1 of that Act (that is, without the exclusions contained in Schedule 14 to that Act); and

"local housing authority" has the same meaning as in section 261(2) of the Housing Act 2004.
- 8 Without prejudice to the power of the court to cancel or modify a prohibition notice under article 35(2), no failure on the part of an enforcing authority to notify under paragraph (6) makes a prohibition notice void.
- 9 Where a prohibition notice has been served under paragraph (1) the enforcing authority may withdraw it at any time.

- 10 In this article, "premises" includes domestic premises other than premises consisting of or comprised in a house which is occupied as a single private dwelling and article 27 (powers of inspectors) shall be construed accordingly.

EXTRACT FROM ARTICLE 32 - OFFENCES (IN RELATION TO ARTICLE 31)

- 1 It is an offence for any responsible person or any other person mentioned in article 5(3) to—
- (a) fail to comply with any requirement or prohibition imposed by articles 8 to 22 and 38 (fire safety duties) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- 2 It is an offence for any person to ... (h) fail to comply with any prohibition or restriction imposed by a prohibition notice.

Appendix 2 - Article 48 Regulatory Reform (Fire Safety) Order 2005 (as amended)

ARTICLE 48 SERVICE OF NOTICES

- 1 Any notice required or authorised by or by virtue of this Order to be served on any person may be served on him either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
- 2 Any such notice may—
 - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body; and
 - (b) in the case of a partnership, be served on or given to a partner or a person having control or management of the partnership business.
- 3 For the purposes of this article, and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this Order, the proper address of any person is his last known address, except that—
 - (a) in the case of a body corporate or their secretary or clerk, it is the address of the registered or principal office of that body;
 - (b) in the case of a partnership or person having control or the management of the partnership business, it is the principal office of the partnership,and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is their principal office within the United Kingdom.
- 4 If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address as the one at which he or someone on his behalf will accept notices and other documents, that address is also to be treated for the purposes of this article and section 7 of the Interpretation Act 1978 as his proper address.
- 5 Without prejudice to any other provision of this article, any such notice required or authorised to be served on or given to the responsible person in respect of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible individual who is or appears to be resident or employed in the premises.
- 6 If the name or the address of the responsible person on whom any such notice is to be served cannot after reasonable inquiry be ascertained by the person seeking to serve it, the document may be served by addressing it to the person on whom it is to be served by the description of "responsible person" for the premises (describing them) to which the notice relates, and by delivering it to some responsible individual resident or appearing to be resident on the premises or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.
- 7 Any notice required or authorised to be given to or served on the responsible person or enforcing authority may be transmitted to that person or authority—
 - (a) by means of an electronic communications network (within the meaning given by section 32 of the Communications Act 2003); or

- (b) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.
- 8 Where the recipient of the transmission is the responsible person, the transmission has effect as a delivery of the notice to that person only if he has indicated to the enforcing authority on whose behalf the transmission is made his willingness to receive a notice transmitted in the form and manner used.
- 9 An indication to an enforcing authority for the purposes of paragraph (8)—
- (a) must be given to the authority in any manner it requires;
 - (b) may be a general indication or one that is limited to notices of a particular description;
 - (c) must state the address to be used and must be accompanied by any other information which the authority requires for the making of the transmission;
 - (d) may be modified or withdrawn at any time by a notice given to the authority in any manner it requires.
- 10 Where the recipient of the transmission is the enforcing authority, the transmission has effect as a delivery of the notice only if the enforcing authority has indicated its willingness to receive a notice transmitted in the form and manner used.
- 11 An indication for the purposes of paragraph (10)—
- (a) may be given in any manner the enforcing authority thinks fit;
 - (b) may be a general indication or one that is limited to notices of a particular description;
 - (c) must state the address to be used and must be accompanied by any other information which the responsible person requires for the making of the transmission;
 - (d) may be modified or withdrawn at any time in any manner the enforcing authority thinks fit.
- 12 If the making or receipt of the transmission has been recorded in the computer system of the enforcing authority, it must be presumed, unless the contrary is proved, that the transmission—
- (a) was made to the person recorded in that system as receiving it;
 - (b) was made at the time recorded in that system as the time of delivery;
 - (c) contained the information recorded on that system in respect of it.
- 13 For the purposes of this article—
- "notice" includes any document or information; and
 - "transmission" means the transmission referred to in paragraph (7).

Appendix 3 - The Notice



PROHIBITION NOTICE

NOTICE ISSUED UNDER ARTICLE 31 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005 (AS AMENDED)

- Premises to which this notice relates:** + *Business name and address of premises to which the Notice relates.*
- Use of the premises to which this notice relates:** + *This is the actual, current use of the premises. i.e. Residential Including sleeping accommodation*
- Name of responsible person:** + *Name of responsible person or other person under Article 5(3) on whom the notice is to be served. (name of company if Limited or plc) If it is not clear who the responsible person is, the notice should be served on "The Responsible Person for the premises to which this notice relates:"*
- Address of responsible person:** + *Enter the address of the responsible person. This can be the last known address of the responsible person, the registered address of a body corporate or the principle office of a partnership. If the notice is served on "The responsible person for:", the "Address of responsible person" line should be deleted.*
- Name of authorising officer:** + *AC or DAC*

The London Fire Commissioner (the Commissioner) , 169 Union Street, SE1 0LL hereby give notice that the Commissioner is of the opinion that the use of the premises to which this notice relates involves, or will involve, a risk to relevant persons so serious that the use of the premises ought to be prohibited or restricted.

The Commissioner is of this opinion because: (**delete the fire safety deficiencies listed below that do not apply to this premises**)

- Fire separation between floors is insufficient
- The means of escape is inadequate
- Fire protection for the means of escape is insufficient
- The means of giving warning in case of fire is insufficient.
- Escape routes are blocked or obstructed by combustible materials.
- Quick and safe evacuation is compromised because occupants have to pass through areas of high fire risk.
- Quick and safe evacuation is compromised by the presence of highly combustible materials.

The Commissioner hereby directs that the use of the premises to which this notice relates is prohibited or restricted as follows:

+ (Specify nature of prohibition or restriction. See model text "B" in Appendix 4 of FSIGN 309, adjusted as necessary) until the matters identified above as giving rise to serious risk have been remedied.

In the opinion of the Commissioner the risk of serious personal injury to relevant persons is imminent. The prohibition or restriction specified in this notice has immediate effect.

This notice continues in force until the matters identified above as giving rise to serious risk have been remedied or the Commissioner withdraws it. Further works or measures may be required to achieve compliance with the Regulatory Reform (Fire Safety) Order 2005 (as amended). Where necessary, these will be detailed in a separate enforcement notice.

Signature: _____ Date: _____

“Assistant Commissioner / Deputy Assistant Commissioner”
(The Officer appointed for the purpose)

NOTES

1. Contravention of any prohibition or restriction imposed by a prohibition notice is an offence under Article 32 (2) (h) of this Order and renders the offender liable, on a summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.
2. In any proceedings for an offence referred to in note 1, where the person charged is a person other than the person on whom the prohibition notice was served, it shall be a defence for that person to prove that he/she did not know and had no reason to believe the notice had been served.
3. The person on whom the notice is served has a responsibility to take all reasonable steps to ensure compliance with the notice and is advised to make the effect of the notice known to those who might work on or resort to the premises. Failure to take such steps may constitute a contravention of the terms of the notice and render the person on whom the notice is served liable to the penalties described in note 1.
4. Your attention is drawn to the provision for appeal to a magistrates' court against this notice in Article 35 of the said Order.

A person on whom a prohibition notice is served may appeal to the court within 21 days from the date on which the prohibition notice is served.

The bringing of an appeal does not have the effect of suspending this notice, unless on the application of the appellants, the court so directs (and then only from the giving of the direction).

ENVIRONMENT AND SAFETY INFORMATION ACT 1988 SECTION 4 - PROTECTION OF TRADE SECRETS

The above Act requires the London Fire Commissioner to maintain public registers of notices issued under Article 31 of the Regulatory Reform (Fire Safety) Order 2005 (as amended), (other than those which impose requirements or prohibitions solely for the protection of persons at work) and Sections 21 and 22 of the Health and Safety at Work etc., Act 1974.

Provisions are made within the Act for persons on whom the above notices are served to appeal against any proposed entry in the register which may disclose "trade secrets" or "secret manufacturing processes".

Entries in the register are required to be made after the period for appeal against the notice expires or after any appeal is disposed of.

If you feel that any such entry would disclose information about a trade secret or secret manufacturing process you may write to the Commissioner within a period of 14 days following the service of the notice, requesting exclusion of these details (see Section 4 of the 1988 Act).

Appendix 4 - Model Text for the Notice

<p>Fire safety deficiency listed on the Prohibition Notice</p> <p>Text A</p>	<p>Nature of prohibition or restriction</p> <p>Text B</p>
<p>Fire separation between floors is insufficient The means of escape is inadequate Fire protection for the means of escape is insufficient The means of giving warning in case of fire is insufficient. Escape routes are blocked or obstructed by combustible materials. Quick and safe evacuation is compromised because occupants have to pass through areas of high fire risk. Quick and safe evacuation is compromised by the presence of highly combustible materials.</p>	<p>Full prohibition of the premises</p> <p>The whole of (identify premises by name, address or location) must not be used until the matters identified above as giving rise to serious risk have been remedied.</p> <p>Partial restriction:</p> <ul style="list-style-type: none"> • The (specify part of premises) must not be used. OR • The (specify part of premises) must not be used for (specify activity) OR • The (specify part of premises) may only be used for (specify activity) <p>Examples:</p> <ul style="list-style-type: none"> • The first and second floors must not be used for residential purposes, including sleeping accommodation, • The basement may only be used for storage • The premises may not be used for a public event or gathering on the (insert date) • The (specify parts of premises) may only be used for a maximum number of (insert number) people.

Appendix 5 - Actions and considerations for DACs dealing with a potential Article 31 scenario

- 1 Ascertain the experience/background of the officer(s) on site. If not already involved, a SFSO must always attend for backup/second opinion. Their assessment will provide an initial filter regarding the facts of the case.
- 2 Does The Order apply? Are the premises those where we have enforcement powers and/or are we the most appropriate authority? (E.G. if Crown owned/occupied Crown Premises Inspection Group enforce the fire regulations; Health & Safety Executive enforce unoccupied building sites; and the Ministry of Defence enforce their own premises). If unable to confirm this do not delay in serving the notice – we can discuss the issues later. Remember, embassies/diplomatic premises are an exception – you should liaise with Diplomatic Protection Squad.
- 3 Are we confident that we have identified the Responsible Person? This is desirable but not essential for Article 31 Notices. If all reasonable attempts fail the Notice can be addressed to 'The Responsible Person for' and the notice fixed to a conspicuous position within the premises.
- 4 Has the Fire Safety database (Farynor) been checked for any current/pending enforcement history and/or existing Article 31 Notices?
- 5 Emphasise that (unless pre-emptive) premises on which Article 31 Notices have been raised should also be considered for prosecution. Encourage an initial investigation i.e. taking of contemporaneous notes; compilation of - or sourcing of - premises layout plans; taking of photographs; and completion of the Senior Fire Safety Officers Report. This report should include those Articles contravened .
- 6 Remember the deficiencies that should generally be present: source of ignition; fire loading; and inadequate means of escape detailed in section 3 of this policy. (It is advisable to have an up-to-date copy of this policy to hand for reference). Although just one of these factors can be sufficient for a notice depending on individual risk assessment.
- 7 Can appropriate immediate action be taken to reduce level of risk to a standard not requiring this level of Notice to be issued? Note – Do not accept verbal undertakings from the responsible person etc., particularly regarding changing the use of the premises.
- 8 Attaching a schedule to the Notice is optional. The preferred procedure is to detail any work necessary on an Enforcement Notice which will be compiled by the local FSR Team during the next working day.
- 9 All notices under Article 31 are Prohibition Notices, but they have the ability to prohibit **or** restrict the use of all or part of the premises.
- 10 If premises constitute multiple dwellings, has the relevant Local Authority been informed? If available always ask the Local Authority if they intend to use their powers particularly for stand-alone housing. (They must attend if children involved).
- 11 If all else fails request a Local Authority Liaison Officer (LALO).
- 12 During office hours the Enforcement Team at HQ can be an invaluable resource for advice and support.
- 13 It is recommended that you undertake a site visit, particularly if in any doubt.

- 14 Due regard to the above, will assist the 1-2-1 case conference and support your decision making. Remember: yours is the only signature on the Notice. Should the Notice be challenged, your rationale may well be subject to legal scrutiny in a Court of Law, so it is in both your and the Commissioner's interest to ensure an auditable record of the decision making process is in place.
- 15 Remember, it is a DACs responsibility to ensure the Director of Operations receives a short brief. This can be incorporated into the brief that accompanies the AC FSR's copy of the notice that is compiled by the SFSO:

A copy of the notice should be sent to the AC (FSR). DACs should ensure that a brief summary of the action taken in issuing the notice is included in a covering note (Form FS08_04). This information is required for the Director of Operations who has requested details of all Article 31 notices issued. The summary is to include:

- A brief description of the premises (size, use, occupancy, any unusual features),
- Reasons for Brigade involvement (FS01 inspection, request from another authority, officer at incident, complaint etc.),
- Any relevant legislative issues (premises subject to alterations notice, licensed premises etc.),
- Any special/unusual matters (notice pinned to door, etc.) or other matters considered relevant such as aspects of decision making process.

The notice and covering note will then be scanned and uploaded to the relevant file as part of the audit trail for any subsequent prosecution/appeal.

Alternatively, in the event of a decision being made not to serve the Notice, then the DAC should send a short email to the appropriate Team Leader outlining their reasons, which once again will be uploaded to the electronic case file.

Document History

Impact assessments

Equality	12/08/2008	Sustainability	xx/mm/yyyy
Health, Safety & Welfare	xx/mm/yyyy	Risk Assessment	xx/mm/yyyy

Audit trail

Listed below is a brief audit trail, detailing amendments made to this policy/procedure.

Page/para nos.	Brief description of change	Date
General review	SFSO role & restriction/prohibition made more clear	13/11/2009
3.3 + 6.4	FS_GEN_77 form introduced	15/03/2010
6.13	Strengthened emphasis on raising FS03 job	15/03/2010
7	Section 7 heading reinstated	14/10/2010
Appendix 5, 6.3, 6.7	New Aide Memoire appendix added + references to it	02/02/2011
6.10	Added DC + removed last sentence	02/02/2011
6.1-3	Brigade control replace with RMC	01/07/2011
All	FSIGN Format	28/02/2012
Page 3	New Section 3 added	16/02/2015
7.10/ App 3/ App 5	Correction of Deputy Commissioner references to Director of Operations	01/04/2015
All	Various changes: new Article 31 letter, 8.4 inserted, 11.2 inserted, Appendix 3 – PN instructions replaced by copy of new version of 'The Notice', Appendix 4: Model text shortened, FS08_07 broadened to incorporate monitoring visit result.	02/10/2017
All	Changed to support LFC governance	01/04/2018
11.4	References to Peak Activity Team removed	09/12/2020
All	Converted to new FSIGN format	21/12/2020
All	Updated to recognise the RR(FS)O is amended	01/05/2022