

Fire Safety Engineering
Forensic Fire Investigation
Expert Witness

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Dear Sir

Fire Safety Legislation- Holiday Cottages

I read with interest the article by Professor Rosemary Everton on the Regulatory Reform (Fire Safety) Order 2005. As the Scots have to be similar yet different there are also regulations that apply solely in Scotland under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006.

Having been involved in a practical way with fire safety legislation for over 43 years and been the proprietor of holiday cottages for over 16 years I have a dual interest in the matter. I have, of course, always ensured good fire safety regimes in the properties that I own and complying with the provisions of the Regulations will not cost me in terms of time or money. However, it is clear that some serving fire officers are using the regulations to frighten owners of holiday cottages and other small businesses into employing the serving fire officers to undertake risk assessments.

A recent letter from the Business Relationship Manager of a tourist board to all members of the tourist board contained an advertisement from a "fire protection company" that advised that they would assess premises at highly competitive rates and that their principal consultant was: "a graduate member of the Institute of Fire Engineers, NEBOSH qualified and holds an HNC in Fire Safety Studies. He is currently an acting Fire Officer within a local authority Fire and Rescue Service serving for the last 16 years, the last 5 years of which he has been Station Officer working in a supervisory capacity within the Fire Safety Department". The advertisement concluded with "*Saving you time and money by formulating workable and cost effective solutions*"

Setting aside the obvious conflict of interest where a serving Fire and Rescue Service enforcement officer is also carrying out external consultation work on a

commercial basis, the most workable and cost effective solution for a small business would be for the responsible person to carry out the risk assessment themselves following one of the excellent guidance documents in the English and Welsh guidance documents.

In theorising about the application of the legislation, Professor Everton refers to *Uratemp Ventures v Collins* to suggest that a holiday cottage is not a private dwelling and therefore not domestic premises and therefore not excluded from the requirements of the Regulatory Reform (Fire Safety) Order 2005. However, as I understand it, a judgement made on a particular set of circumstances (such as *Uratemp Ventures v Collins*) does not necessarily mean that a similar judgement would be made if a different set of circumstances were presented to a Court and then taken through the appeals process. There have, of course, been many reported instances where the decisions of senior judges have been incorrect (or even unlawful).

In addition to the views expressed by Professor Everton, the Chief Fire Officers Association Scotland has taken advice from the Scottish Executive and HM FSI for Scotland and has concluded that holiday cottages come within the Order and Regulations.

This opinion is not contained within the Fire Safety Guidance Booklet issued by the Scottish Executive. The guidance does not refer to holiday cottages. In fact it states "Domestic premises do not generally fall within the scope of this act but there are some exceptions which include those requiring a licence under the Houses in Multiple Occupation mandatory licensing scheme and some care homes". Clearly HMOs and care homes are quite different from holiday cottages.

However, even if the question of whether or not holiday cottages are domestic premises is ignored, the Regulatory Impact Assessment was clear in how and where the legislation should be applied i.e. "To focus resources for fire prevention on those premises which present the greatest risk". The RIA also stated, under the heading "Better targeting of resources":

"The move away from a system based on certification of prescribed classes or uses of building will give fire authorities the freedom to develop their inspection programmes on the basis of risk. Introduction of the new regime does not assume that there will be any alteration in the level of resources dedicated to fire safety, and it assumed that the number of inspections carried out will not change. Adjustments to resourcing levels may however arise due to other factors for example Integrated Risk Management Planning by Fire Authorities. Inspections will be focussed on premises that pose the highest risks in comparison to others in the area, and thus more effectively deployed. It also maximises the benefits in terms of the efficient use of fire service resources since fire authorities will more often be enforcing fire safety law in their own right, rather than as third parties consulted by those administering other regimes."

In spite of the RIA specifically stating that the new regulations will move away from a system based on prescribed classes or uses of buildings and focus resources on

those premises which present the greatest risk, a reply from HM FSI for Scotland stated: "You describe the legislation as being risk based in its application. This is not a description that I can agree with. Whereby the legislation itself imposes risk based fire safety requirements, the legislation in its application is not risk based. It imposes requirements in respect of all premises to which Part 3 applies. In its application to premises, the legislation is therefore prescriptive".

A holiday cottage can be rented for any period from two days to 6 months. It is usual for other tenanted property to be rented for a year or more. I believe that any objective risk assessment (and examination of fire statistics) would reveal that there are more fires, more injuries and more fatalities in houses and flats that are rented on a permanent basis than houses and flats that are rented as holiday cottages. In fact I doubt if there are any statistics that show any injuries or deaths from fire in holiday houses and flats in Scotland.

It would appear that, in spite of the Act specifically excluding domestic premises (and the lack of any demonstrable need for risk assessments in domestic premises used as holiday lets), Professor Everton, HM Fire Service Inspectorate, the Fire and Civil Contingencies Division, CFOA Scotland and the Scottish Tourist Board are convinced that domestic premises that are let for short periods (such as holiday cottages) are subject to the legislation (and therefore risk assessment) but that premises let for longer periods (such as council or housing association houses and flats) are not subject to the legislation (and therefore not subject to risk assessment).

The academic arguments are interesting, but to include holiday cottages in the enforcement process will not focus resources for fire prevention on those premises which present the greatest risk, it will do the opposite. It will not maximise benefits in terms of the efficient use of fire service resources it will be a waste of such resources.

I recall the period after the introduction of the Fire Precautions Act 1971 when many of the initial interpretations of the extent of the legislation by HM Fire Service Inspectorate, CAFOA and individual Fire Authorities had to be altered as different classes of premises were inspected. I urge all of the interested parties in this new legislation to reconsider their opinions and for Fire & Rescue Services to use their ever reducing resources where they are needed.

Yours sincerely

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