

## The Fire Precautions Act in practice



# The legislation

This special issue on the Fire Precautions Act in Practice (part I: AJ 25.8.76 pp335-375) continues with this second part which provides the legislative and procedural guide within which the techniques described in the previous part must be applied. The legislation section is based on information supplied by ANN EVERTON, barrister at law, and GORDON COOKE, head of the regulations, codes and standards section, Fire Research Station, BRE.

## 7.1 Background to the Act

The law has been involved with the problem of fire for many years but its concern for actual fire prevention is comparatively recent. The roots of fire prevention law are to be found in the squalid rapid growth of the industrial revolution, out of which emerged a need for legislation. This legislation, like the industrial growth itself, was rather fragmentary, developing to meet needs as they arose. Growth in this piecemeal fashion has led, not only to a lack of coherence within the regulations, but also to a miscellaneous assortment of authorities enforcing them, each one doing so with varying severity. The need for rationalisation has gradually become obvious.

### Legislation for new and existing buildings

The Holroyd Committee on the fire service rejected the idea of introducing one comprehensive fire safety Act. Members held the view that new and existing buildings should be dealt with separately:

- The building regulations should deal with the requirements for new and altered buildings
- New legislation should be passed to cope with fire precautions in existing premises.

Shortly afterwards, in 1971, the new Fire Precautions Act was introduced in accordance with this philosophy, its aim being to improve the standard of fire protection for people in existing buildings on a consistent basis in relation to a variety of uses. Control of new buildings will continue to be through the building regulations, as suggested by the Holroyd Committee. However, to ensure that there should be no conflict between the building regulations and requirements under the Fire Precautions Act, sections 13 and 14 restrict the power of the fire authority to impose further requirements in the case of a building which already complies with the building regulations.

## 7.2 The Fire Precautions Act

The Fire Precautions Act was the first Act to deal exclusively with the problem of fire, and soon after its introduction it became notorious for both length and complexity. The Act is only concerned with the provision of adequate means of escape in buildings already in use. Its powers cannot be applied at once to the entire list of buildings suggested in the Guide to the Act: 1: Appendix A. The Home Office has to make a statutory instrument (designating order) for each of the building types on the list, requiring fire authorities to inspect and make the occupiers of the building type named in the designating order bring their buildings up to the standards of the Act, if they do not already comply. The first premises to be the subject of such an order were hotels and boarding houses, and it is expected that other building types will be

designated in due course. So the Act will be brought into total control piece by piece.

### Buildings covered by the Act

Eventually, the Act will cover all buildings which fall into one of the following categories of use:

- recreation, entertainment or instruction or for any club, society or association
- teaching, training or research
- institutions providing treatment or care
- any purpose involving the provision of sleeping accommodation
- any use involving access to the building by members of the public, whether on payment or otherwise
- (since the enactment of the Health and Safety at Work etc Act 1974) the use of the premises as a place of work.

### Designation orders

The Home Secretary has only made one designation order so far. This requires fire certificates to be obtained if premises are used as a hotel or boarding house. However, the assistant secretary to the Home Office stated at the National Fire Protection Conference earlier this year that from 1 January 1977 the Home Office will designate places of work which currently fall within the scope of the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963. In the main this will (in the case of places of work) be confined to premises where 20 or more people are employed (or 10 elsewhere than on the ground floor).

### Future designations

The order of priorities for future designations will largely depend on the resources of the fire authorities. It is not just a case of establishing where the major risks to life lie as a result of the inadequacies of existing legislation; it is equally important to weight this against the workload involved in bringing new classes within control. For instance, hospitals have been widely mentioned as a building type requiring designation under the Act, but there is grave doubt whether the nation can at present afford the several million pounds this would cost.

### Requirements of the Act

The Act requires that:

- means of escape and their safe and effective use
  - means of fire fighting
  - means of giving warning in case of fire
- should attain a reasonable standard. The fire authority should inspect the premises and grant a fire certificate if this standard is achieved. If not, the premises must be upgraded. The certificates also impose requirements as to maintenance, instruction and training of staff, limitation of numbers and observance of

other fire precautions. This concept of certification is borrowed from the Factories Act and the Offices, Shops and Railway Premises Act.

The Act is concerned only with the protection of life in the event of fire in an existing building and achieves this through ensuring that adequate means of escape are provided. It cannot be applied to the protection of buildings, although it is likely that measures to protect life in the event of fire will also help protect the building.

The Act, which contains 44 sections, was discussed and interpreted in a previous AJ Technical study, 'How the Fire Precautions Act affects the architect' AJ 14.6.72, 21.6.72, 29.6.72, 5.7.72 [(R1) (Ajk)]. An HMSO guide—1 *Hotels and boarding houses* will also help readers to acquaint themselves with the provisions of the Act. However, this article only pursues some of the more narrowly defined issues:

- The certification process and the use of the architect or specialist consultant during this period.
- The situation where an architect or consultant gives advice which is negligent.

### Relationship with building regulations

Existing and proposed building regulations and other enactments concerning structural fire precautions and means of escape from fire will, however, apply to new buildings, and alterations and extensions to existing buildings. Therefore where means of escape in existing hotels and boarding houses require alterations or extensions, it is clear that local authority officers will be involved. For example, planning and building control officers will have an interest in the siting and construction of new external fire escape stairs and associated doors.

## 7.3 The certification process

### Application for certification

When hotels and boarding houses were designated by the Home Office, owners or occupiers providing sleeping accommodation for more than six people (whether guests or staff) were required to get in touch with the fire authority to obtain the necessary forms for certification.

The fire authority sent a copy of form FP1 (Application for a fire certificate) to be completed and returned as soon as possible. The occupier's attention is usually drawn to the explanatory information in the guide\*.

The occupier is asked to complete a form asking how much sleeping accommodation is provided for guests and staff on each storey. In the case of hotels and boarding houses trading at the time the designation order was made, these applications should have been completed and returned to the fire authority not later than 1 June 1972. The applicant can continue to trade in the premises as long as an application has been made and he is waiting to see if the certificate is granted or refused.

The fire authority will acknowledge receipt of the application form and subsequently will require that the occupier (usually the architect or agent) should provide plans of the premises (Section 5 (2) of the Act) within the time limit prescribed by the particular authority—usually 28 days. Line drawings of 1:100 or 1:200 scale are satisfactory provided they show all walls, partitions, corridors, staircases, steps and gangways, direction of swing of each door and the use of each room.

If drawings are not supplied within the stated time the fire authority sometimes agrees to an extension of time, pointing out that under Section 5 (2) of the Act failure to provide the plans constitutes a withdrawal of the application, whereupon it seems that the owner or occupier cannot continue to put the premises to their designated use without committing an offence. Architects called upon by clients to provide plans must therefore be careful to heed the time limit.

### Inspection

Upon receipt of the plans the fire authority in due course will make a thorough inspection of the premises sending the formal notice of steps to be taken to the occupier. The occupier and authority may have informal consultations. Copies of the steps to be taken are sent by the fire authority to the local authority (so satisfying the requirement to consult under Section 17 of the Act). Where alterations and extensions are involved (eg provision of external or an additional internal staircase, extra doors in external walls and any major structural work) the work must comply with the building regulations in addition to those of the fire authority.

### Upgrading requirements

The notice of steps to be taken will include, where appropriate, provisions for upgrading of the construction and furnishings, fire alarms and fire fighting and fire notices and the need for any certificates of assurance dealing with flame retardant treatments and for completion certificates confirming that installations, eg emergency lighting, have been carried out. The work of upgrading begins and should be completed within a reasonable period (usually six to twelve months). Depending on the availability of manpower, the fire authority will normally welcome the opportunity to inspect the work as it progresses. This can help the owner to avoid the expense of having unacceptable work replaced.

### Issue of certificates

The fire authority then makes a final inspection of the premises and will issue a certificate if they are satisfied that the means of escape, the means provided for their safe and effective use, the means for fighting fire and the means for giving warning in the event of fire are such as may reasonably be required. The certificate is a document several pages long. If a certificate is refused, the fire authority will notify the applicant about steps which he must take and the time limit in which any alterations must be completed. He can then be reconsidered for certification.

### Appeals

If the applicant finds that the demands made by the local authority are unreasonable, he has the right of appeal. Section 9 says that a person who is aggrieved by anything mentioned as a step to be taken as a condition of the issue of a fire certificate may appeal to the magistrate within 21 days from the date on which the approval notice was served. Any architect or consultant involved will not find anything in the Act to assist him with advising his client on what grounds appeal can be based. If he is to advise his client competently he must be well aware of techniques of fire safety. He will need to argue his case around the guiding criterion of the Act—reasonableness—the conditions for granting a fire certificate being the satisfaction of the fire authority that the premises are provided with means of escape, means of warning and so on, such as may reasonably be required in the circumstances. Clearly this is a very fluid concept, capable of considerable variations in interpretation.

### Ground for appeal

The ground for appeal should be on the degree of safety appropriate to a particular hotel, and on the techniques required to attain this. Alternative proposals should be the result of conscious balancing of the value of any fire safety technology techniques available which will reduce the time required by occupants to move to a place with an acceptable level of safety. There is a further right of appeal to the Crown Court for anyone aggrieved by an order made by a magistrates' court.

\* *Guides to the Fire Precautions Act 1: hotels and boarding houses*, HMSO.

### Dangerous premises

Where the fire authority gets to know of premises which are allegedly dangerous, its officials can gain entry for surveying and, if necessary, make it immediately illegal for business to continue. This is detailed in Section 10 of the Act.

This is the certification process most commonly used; however, it will be seen from the 'Points of view of the fire brigades' that problems of enforcement in different areas around the country, have forced many brigades to vary the process a little (see 9.1). Many of these problems stem from the shortage of manpower in the fire services which has led to a considerable backlog of inspections. Of the 50 000 premises requiring certification under the 1972 order, three-and-a-half years' work still leaves a backlog of inspections approaching 50 per cent. The fire authorities say that this has left them little time to check on premises which should have applied for certification under the Act, and have not done so yet.

### Submission of schemes for approval

To speed up the certification process, several fire authorities will allow the hotel owner (taking the advice of his architect and fire consultant) to submit improvements for approval after returning the application for certification, and before the fire officer's survey.

### Alterations to certified premises

If 'material' alterations are made to the premises or their internal arrangement after certification has been granted, the occupier should notify the fire authority. 'Material', means any alteration which would make the means of escape and related fire precautions inadequate in relation to the normal use of the premises as described to and seen by the fire authority when the original inspection was made. It is unlikely that there will be any need to notify the authority each time furniture is re-arranged or a room is redecorated. They should be informed if the proposals involve physical alterations to the means of escape and its associated protection, even if these are only temporary. Because of the changing circumstances in premises the requirements of fire certificates will have to be reviewed from time to time. The fire authority has powers to inspect premises to see whether conditions have changed to the extent that means of escape and related fire precautions are no longer adequate.

In the context of alterations, it seems that the hotelier's specialist adviser could be involved in two ways:

- He could be concerned with whether the proposed change constitutes a 'material' change. Materiality is a concept as flexible as reasonableness and he may become involved in highly contentious disputes.
- He may be involved in an appeal against a fire authority's direction on steps to be taken. The same problems detailed under 'appeals' may arise.

## 7.4 Negligent advice

For a long time there has been a sharp distinction in law between a person giving advice when under a contractual obligation to do so, and where he gives advice in the absence of any contract to do so. If X were under a contractual duty to give advice to Y, and gave Y negligent advice, the law would hold him responsible for that advice, but if negligent advice were given in the absence of any contract the law was far less ready to make him liable. Recently, this sharp distinction has been gradually becoming obliterated. If there is a contractual duty to advise, and negligent advice is given, the adviser will still be held responsible, but now if negligent advice is given in the absence of any contract, the giver may be held liable.

### Negligence and the architect

Here we are concerned with the architect giving negligent advice while advising a client who is involved with alterations

to premises to make them comply with the Fire Precautions Act. In the rather narrow situations arising out of the certification process there will usually be a contract between the architect and the person he advises, and thus clear liability for negligent advice. However, the situation of other consultants to whom the hotelier may refer may be on a non-contractual basis, where the case is less clear cut.

Ignoring the certification process, we shall now consider the architect's general position on negligent advice. The law is not easy to understand, and, over the past few years has been growing rapidly. Suppose that in consequence of an architect's negligent advice a fire assumes much greater proportions than would otherwise have been the case, and as a direct result many suffer injury and the building is damaged extensively. A situation of damage to premises was the subject of comment by Lord Denning in the recent case of *Dutton v Bognor Regis Urban District Council*. He said, '... since the case of *Hedley Byrne & Co v Heller & Partners* it was clear that the professional man who gave guidance to others owed a duty of care, not only to his client, but also to another who was relying on his skill to protect him from harm... a banker, lawyer or accountant who gives advice on financial or property matters owes a duty to those who rely on him and suffer loss in consequence. But the duty of a professional man who gives advice on the safety of buildings, machine or materials is to all those who might suffer injury if his advice is bad.'

From this point and warning note it is clear that the architect must guard himself against being shown to have given negligent advice. Clear records of contacts made during the alteration work may help, particularly if he can show that he did all that can reasonably be expected of him and that he followed an opinion which was held by several experts in the field to be the right and appropriate precaution.

