

Changes to Fire Safety Law

The Regulatory Reform (Fire Safety) Order 2005 was approved by Parliament on 7 June 2005 and became law on 1 October 2006.

As part of the Government's commitment to reduce death, injury and damage caused by fire, the Department for Communities and Local Government reviewed fire safety law and made a number of changes which were designed to make the law easier to understand and comply with.

The changes apply to non-domestic premises only.

What does this mean for property owners and occupiers?

The main effect of the changes are a move towards greater emphasis on fire prevention in all non-domestic premises, including the voluntary sector and self-employed people with premises separate from their homes.

Fire certificates have been abolished and cease to have legal status.

The 2005 Fire Safety Order applies in England and Wales. Northern Ireland and Scotland will have their own laws.

It covers "general fire precautions" and other fire safety duties which are needed to protect "relevant persons" in case of fire in and around most "premises". The Order requires fire precautions to be put in place "where necessary" and to the extent that it is reasonable and practicable in the circumstances of the case.

Responsibility for complying with the 2005 Fire Safety Order rests with the "responsible person". In a workplace, this is the employer and any other person who may have control of any part of the premises, for example, the occupier or owner. In all other premises the person or people in control of the premises are responsible. If there is more than one responsible person in any type of premises, all of them must take all reasonable steps to work with each other.

If you are the responsible person you have to carry out a fire risk assessment which must focus on the safety in case of fire of all "relevant

persons". The assessment should pay particular attention to those at special risk, such as the disabled and those with special needs, and must include consideration of any dangerous substance likely to be on the premises. The fire risk assessment should help you identify risks that can be removed or reduced and to decide the nature and extent of the general fire precautions you need to take to protect people against the fire risks that remain.

If you employ five or more people you must record the significant findings of the fire risk assessment.

Glenn Craft



Demoted Tenancies - A Reminder

Under the Anti-Social Behaviour Act 2003 registered social landlords can now apply to the County Court for a demotion order. It is a very useful but little used provision used to terminate an assured tenancy to create a demoted tenancy (which has the status of an assured shorthold tenancy) in circumstances where the tenant or a person residing in or visiting the tenant's property has engaged or has threatened to engage in anti-social behaviour or has used the premises for unlawful purposes.

Registered social landlords may wish to consider the use of a demoted tenancy in circumstances where it may be reasonable to give a tenant a "second chance"

whilst at the same time marking the seriousness of the tenant's behaviour. Once a demotion order is made a tenant knows that his security has been removed and he is at risk of losing his property. A repetition of anti-social behaviour would then almost certainly result in the tenant being evicted from the property.

Demoted tenancies last for one year after which the tenancy will revert back to an assured tenancy unless the landlord during that time gives notice of intention to take proceedings for possession, in which case the demoted tenancy can continue for longer.

David Watson

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Tree Preservation Orders

Tree preservation orders have the potential to prevent, or at least complicate proposed developments.



As developers increasingly turn to previously developed land in accordance with Government policy, tree preservation orders ("TPOs") are becoming a more regular issue. Many of the site assembly projects for residential development that we deal with involve gardens with mature trees. In order to protect the amenity value of such trees, Local Planning Authorities will often impose TPOs as soon as any application

for planning permission is submitted, or sometimes as soon they receive any hint of redevelopment proposals.

If a TPO is imposed, then the affected trees cannot be felled or lopped without the consent of the Local Planning Authority. Clearly, this may have a significant impact upon future development.

The penalty for deliberately felling a tree subject to a TPO without the requisite authorisation is a fine of up to £20,000. In addition, the offender will be required to replace the tree by re-planting.

If a tree subject to a TPO is required to be felled or lopped in order to immediately commence development for which planning permission has been granted, then so long as that TPO was made in accordance with model

legislation (currently the Town & Country Planning (Tree) Regulations 1999), consent to fell/lop the tree is given automatically by virtue of the planning permission. This is because the existence of the TPO, and the value of the tree(s) in question will have been considered during the planning application procedure, and the tree officers of the Local Planning Authority consulted. Again care must be exercised here, as only planning permissions capable of immediate implementation apply. Therefore only full planning permissions as opposed to outline ones will provide the deemed consent.

It is possible to object to a TPO. A TPO is initially made on a provisional basis, and a period for representations is then given prior to the Local Planning Authority determining whether or not to confirm it. The strongest grounds for objection are that the tree or trees in question are not actually worthy of protection. However, in order to present a convincing case, it may be necessary to engage an arboriculturist to prepare a report to that effect.

Developers often ask if they can fell trees that are not subject to TPOs. The answer is perhaps, but proceed with extreme caution and seek specific advice first. If the site is within a conservation area you may need to give notice to the planning authority specifying which trees you intend to cut down and apply for a felling licence. There may be other requirements if the trees are in a churchyard or in part of ancient woodland, or if the felling would affect birds or wildlife.

Mark Dixon

Lease Surrenders

There are two ways that a lease can be surrendered. An express surrender requires a formal legal document which will need to be signed by the landlord and the tenant and also by any lender who has an interest in the premises. The second way to complete a surrender is without a formal document and this is commonly known as a surrender by operation of law. Difficulties can arise as to whether or not there has been an implied surrender and it has been established by the courts that the conduct of the landlord and the tenant must be shown to be an unequivocal acceptance that the lease has ended. If, for example, a tenant leaves the premises and returns the keys to his landlord leaving substantial rent arrears and the landlord does not actively chase those rent arrears and the property remains vacant, the tenant may well want to argue that there has indeed been an implied surrender. If the question is put to the court though it may decide that there is nothing to indicate that the

Landlord has intended to accept the ending of the lease. It will depend upon the particular circumstances arising. A landlord who does not want the lease to end in such a situation should consider returning the keys to the tenant and continue to send out rent demands to the tenant and the landlord should not start paying any business rates for the premises but instead refer the council to the tenant for payment.

Glenn Craft

INFORMATION

If you have any queries on any aspect of property law please contact:

Neil Franklin at Hull on (01482) 323239

Douglas Oliver at York on (01904) 625790

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 11 January 2007

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