

APPLYING FOR A DETERMINATION IF YOU HAVE A FIRE SAFETY DISPUTE

Dispute determination is a statutory process which allows for technical disagreements about fire safety measures to be considered independently without the need for appeal to the Courts.

Version 4. May 2018

Chief Inspector of the Scottish Fire and Rescue Service

APPLYING FOR A DETERMINATION IF YOU HAVE A FIRE SAFETY DISPUTE

INTRODUCTION

1. The fire safety regime for non-domestic premises in Scotland is contained in Part 3 of the Fire (Scotland) Act 2005 as amended (“the Act”) and the Fire Safety (Scotland) Regulations 2006. Fire safety duties are imposed on “dutyholders” (employers and other persons who have control of, or safety obligations in respect of non-domestic premises). Guidance from the Scottish Government on non-domestic fire safety is available on the firelaw website at www.gov.scot/Topics/Justice/policies/police-fire-rescue/fire/Firelaw
2. The Scottish Fire and Rescue Service (“SFRS”) is an enforcing authority for this legislation. As part of its enforcement activity, SFRS enforcement officers may recommend or require dutyholders to provide additional fire safety measures where the existing fire safety measures in premises are considered not to be appropriate for the level of risk. In such cases, it is good practice for enforcement officers to identify why the existing performance in the premises is unacceptable, the purpose of any additional fire safety measure requested and what improvement the additional measures will deliver.
3. There is provision in the Act for appeal to the court by a person who has been served with a notice by the enforcing authority. The Act also provides that dutyholders can apply for a dispute determination if they disagree with what they are asked to do by the Scottish Fire and Rescue Service. This dispute determination process, provided in section 67 of the Act, allows fire safety disputes to be resolved without the need to appeal to the court, thus giving a low cost route to resolution.
4. Dispute determinations are made by the Chief Inspector of the Scottish Fire and Rescue Service (“the Chief Inspector”) who is independent of the SFRS.

WHEN CAN AN APPLICATION BE MADE?

5. The determination procedure in this note is applicable to disputes in respect of relevant premises where the SFRS, as enforcing authority, considers that a dutyholder has failed to comply with their fire safety duties and the SFRS and the dutyholder fail to agree on what action should be taken.
6. While the legislation allows a dutyholder to apply in any disputed case, we only accept applications in those cases where we consider it reasonable and appropriate to do so. These will be cases where there is some evidence that requested fire safety measures may not be proportionate to the level of risk. We will not become involved in cases which we consider are vexatious or frivolous.
7. It is fair that a dutyholder who disagrees with the view of a local enforcement officer should be able to challenge that view. However, such a challenge should take place through the SFRS’s internal review system and not through the dispute determination procedure. Accordingly we will not normally proceed with any case where the dutyholder has failed to fully discuss and negotiate with the SFRS or where the SFRS’s internal review processes have not been exhausted. We expect that most disputes will be resolved by negotiation between the dutyholder and the SFRS with no involvement by the Chief Inspector.
8. We think it reasonable that a dutyholder wishing to apply for determination submits their application within a short timescale of the completion of negotiation with the SFRS.

9. The dispute determination procedure is only relevant to the action required to satisfy technical fire safety matters, it cannot be used to establish a determination of the law such as in cases of doubt as to whether the legislation applies to premises.
10. The dispute determination process by the Chief Inspector also does not cover disputes that relate to procedural, conduct or administrative aspects of the SFRS enforcement. These are areas that should be dealt with through the SFRS's formal complaints procedure and, if unresolved, possibly through the Scottish Public Services Ombudsman¹ in appropriate cases.

HOW TO MAKE AN APPLICATION

11. If you wish to apply for a determination, you should make preliminary contact with us for an informal discussion on the appropriateness of the procedure in your case.
12. We will consider the circumstances and will wish to confirm:
 - that you have received notification of non-compliance from the SFRS;
 - that there has been full negotiation and discussion with the SFRS;
 - that there is a failure to agree on technical matters; and
 - that the case may involve disproportionate or inappropriate fire safety measures.
13. We will discuss the case with the SFRS.
14. If we think the case is not suitable for determination, we will give you a reason for this view.
15. If we think the case is suitable for determination, we will then ask you to submit a written application detailing your case and giving sufficient information to allow us to make a decision. This should include at least the following information:
 - i. your name and contact details;
 - ii. the name and contact details of any agent acting on your behalf in the case;
 - iii. the address and use of the relevant premises to which the dispute applies;
 - iv. a statement explaining the matter(s) under dispute and specifically identifying what you expect a determination on;
 - v. argument or reasoning in support of your viewpoint; and
 - vi. a copy of any document or evidence that you wish to supply in support.
16. The SFRS will be asked to make its own submission. The SFRS submission should include the following information:
 - i. the address and use of the relevant premises to which the dispute applies;
 - ii. which provision(s) of the legislation the SFRS considers there is non-compliance by the dutyholder;
 - iii. the circumstances which indicate that there is non-compliance by the dutyholder with the provision(s) of the legislation;
 - iv. the actions or measures that are considered necessary to remedy the non-compliance;
 - v. the reason why the actions or measures are considered necessary;
 - vi. a copy of any relevant correspondence between the SFRS and the dutyholder; and
 - vii. any other information the SFRS wishes to supply in support.
17. In the interest of procedural fairness, both parties should have the opportunity to respond to arguments presented by the opposing side. Arguments or evidence presented in a submission should therefore be disclosed to the other party.

¹ Scottish Public Services Ombudsman <http://www.spsso.org.uk/>

18. Applicants should be aware that the Chief Inspector is subject to the terms of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. This means that if information submitted by either party is requested by another party, the Chief Inspector would release or withhold the information, as appropriate, in accordance with the provisions of the legislation.

HOW WE DEAL WITH APPLICATIONS

19. We will acknowledge receipt of all submissions.
20. We may request further information to assist with the determination.
21. If considered appropriate, the Chief Inspector or a representative will make a site visit to the premises.
22. We will deal with applications impartially and without bias. Our decision will be fair and proportionate and based on a balanced and considered assessment of the information available.
23. A determination decision will be issued as soon as possible: usually within two months of receipt of all the information, but in complex cases this timescale may require to be extended. There may be occasions when we are unable to make a determination decision or decide that it is inappropriate to do so. In such cases, the parties will be notified and a reason will be given. In cases where we are unable to make a decision, the matter then reverts to the enforcing authority and the dutyholder to progress.
24. Once a determination decision has been made, we will notify by letter or email. Anonymised determination decisions are likely to be made available on our website.
25. After a decision has been issued, the Chief Inspector has no further jurisdiction in the case and any consequential matters are for the dutyholder and the enforcing authority to progress.

TO CONTACT US

Address

Chief Inspector of the Scottish Fire and Rescue Service
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Email: hmfsi@gov.scot

Phone for enquiries: 0131 244 3275

Fax: 0131 244 2564

Website: www.gov.scot/fireinspectorate

26. If you are unhappy with our conduct you may make a complaint by contacting the Chief Inspector at the above address.