Applying the Regulators’ Compliance Code and the Enforcement Concordat

The purpose of this Note is to assist Officers of the Fire Safety Group when developing general fire safety policies or standards in order to ensure that we operate in accordance with the principles of ‘Better Regulation’. It introduces the Regulators’ Compliance Code, which came into force in April 2008, and compares it with the Enforcement Concordat.

The Note looks at what the Fire & Rescue Authority (FRA) needs to do to comply with the new statutory requirements of the Code. It should be read alongside the statutory code of practice published by the Department for Business, Enterprise and Regulatory Reform (BERR) and guidance from the Local Authorities Coordinators of Regulatory Services (LACORS).

The Regulators’ Compliance Code introduces new statutory requirements for all English local authorities, including fire and rescue services. It does not replace the Enforcement Concordat.

This Authority has a key role to play in supporting local economic prosperity and community wellbeing. We must ensure that well-run, legally compliant businesses are supported and that consumers, workers and the environment are adequately protected.

Compliance with the Code will lead to increased transparency, responsiveness and targeting of our regulatory services, which in turn will help improve our service to businesses and the reputation of West Yorkshire Fire and Rescue Service.

The Cabinet Office published the central and local government Concordat on Good Enforcement – the Enforcement Concordat – in March 1998, setting out six principles of good enforcement. Following the Hampton review on administrative burdens, the BRE was established and has published the Regulators’ Compliance Code, which aims to promote efficient and effective approaches to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens. The actions required by the Code reflect the principles of better regulation identified by the Better Regulation Task Force, which state that regulatory activities should be carried out in a way which is consistent, transparent, accountable, proportionate and targeted.
Comparing the Compliance Code with the Enforcement Concordat

The Concordat: The Compliance Code:

The table below compares the Concordat with the Code.

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<th>The Concordat:</th>
<th>The Compliance Code:</th>
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| The Concordat is a voluntary, non-statutory code of practice to which all FRAs in the United Kingdom can sign up to. It defines enforcement activity in the broadest sense, including advisory visits and other assistance, and is not limited in the regulatory activities it applies to. Once an FRA commits to compliance, the Concordat becomes a central part of its policy and practice. Failure to meet these obligations could lead to a finding of maladministration’ by the Local Government Ombudsman. The FRA can choose whether or not they wish to adopt the Concordat. | The Regulators’ Compliance Code is a statutory code that came into force on 6 April 2008, as specified within the Legislative and Regulatory Reform Act 2006 (Section 22). It applies to trading standards, environmental health and licensing as well as the FRA. The Code is a statutory requirement for all English FRAs. The FRA must explicitly consider the Code and the five principles and any decision to depart from them must be properly reasoned and based on material evidence. The duty to “have regard to” the Code applies when authorities are developing general policies or standards. In cases of conflict, other statutory duties take precedence over the Code. The FRA is not bound to follow a provision of the Code if it properly concludes that this is:
  • not relevant; or
  • outweighed by any other relevant consideration

Decisions to depart from the Code must be properly reasoned and based on evidence, which means that the FRA must follow a policy-making process that is documented and that records clear accountability for key decisions. This is particularly important in demonstrating why a decision has been made to depart from the Code.

The Concordat is based on six principles:
  • Setting clear standards.
  • Providing clear and open information.
  • Helping business by advising on and assisting with compliance.
  • Having a clear complaints procedure.
  • Ensuring that enforcement action is proportionate to the risks involved.
  • Ensuring consistent enforcement practice.

The Code is a requirement for all English FRAs. It is consistent with Hampton principles for improved inspection, enforcement and outcomes:
  • Regulators should allow, or even encourage, economic progress and only intervene when there is a clear case for protection.
  • Regulators should use comprehensive risk assessment to concentrate resources on the areas that need them most
  • Regulators should provide authoritative advice easily and cheaply
  • No inspection should take place without a reason
  • Businesses should not have to give unnecessary information
  • Businesses that persistently break regulations should face meaningful sanctions
  • Regulators should be accountable for the effectiveness of their activities
Many aspects of the Concordat and the Code require a similar approach to delivering regulatory services, as the table below shows.

<table>
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<th>The Compliance Code:</th>
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| **Economic progress**  
How can regulatory activity promote the local economy? | |  

The Concordat recognises that equitable, practical and consistent enforcement helps to promote a thriving national and local economy. The Concordat states that costs to business should be minimised by ensuring that action is proportionate to risk.

The Code requires local authorities to consider the impact that regulatory action has on economic progress, especially on small businesses. Burdens should be minimised and activities must be kept under review.

| Risk assessment  
When should assessment be used? | |  

The Concordat recognises that equitable, practical and consistent enforcement helps to promote a thriving national and local economy.

The Code puts risk assessment at the forefront of decision making and it must precede and inform all aspects of regulatory activity, including:

- data collection and other information programmes;
- inspection;
- advice and support;
- enforcement and sanctions.

Stakeholders should be consulted in the design of risk methodologies, which should also be published and regularly reviewed.

| Advice and guidance  
Does the FRA have to offer advice and guidance? | |  

The provision of advice and assistance is central to the Concordat, and it underpins the principle of helpfulness. It is a requirement to provide written advice on request and to distinguish a legal obligation from best practice advice.

The Code introduces additional requirements relating to the provision of advice and information:

- All regulatory legal requirements must be communicated to relevant businesses.
- Clear, concise and accessible information, advice and guidance, which meets the needs of business, must be provided to help businesses meet their obligations.
- Advice and guidance aimed at meeting minimum standards must be distinguished from best practice.
- FRAs must consult on the content, effectiveness and additional costs incurred by businesses.

Basic advice and guidance on compliance is presumed to be free, although additional services may be charged for. Businesses with particularly complex practices may need specialist or professional advice.
The Concordat requires clear standards to be published, setting out the level of service and performance sought, along with the actual results achieved. Wherever possible, the FRA should co-ordinate and have arrangements in place for liaison with other authorities and enforcement bodies.

**Inspections and other visits**

Is the FRA free to act independently when setting inspection programmes?

The Code provides specific practical steps that are to be followed in designing inspection programmes. Inspections and other visits – such as meetings to provide advice about compliance – should result from risk assessment, reflecting the Hampton principle of “no inspection without a reason”. This does not apply if a business has asked for a visit.

Greatest effort should be focused where both:
- failure to comply would pose a serious risk; and
- there is high likelihood of non-compliance.

Random inspection should be limited to tests of a risk-assessment method or the effectiveness of interventions.

There is a duty for local authority departments to collaborate with other regulators, both internal and external, on planned inspections, for example by attending together or sharing data.

**Information requirements**

What must the FRA do before requesting information from businesses?

The Code is particularly concerned with the collection of information.

Before requesting information, the FRA must consider the costs and the benefits to business, and consider how to minimise those costs. Businesses should be consulted about what data is required and how it is collected.
The Concordat imposes both policy and procedure requirements. The policy requirements are:

- set standards
- discuss specific compliance failures
- provide prompt and efficient service
- set up complaints procedures with an explanation of how to appeal

Examples of procedural requirements are:

- provide clear and simple explanations of why remedial action is needed and by when, and this should be separate from best practice advice
- give businesses an opportunity to explain the circumstances of any non-compliance before enforcement action is taken
- explain why immediate action is needed and provide written confirmation
- a written explanation of how to appeal against formal action should be given at the time action is taken
- take action proportionate to risk;
- take attitude of operator into account in deciding action (as far as the law allows);
- avoid unnecessary expense to business;
- promote consistency;
- carry out duties in a fair and equitable manner.

Not covered by the Concordat.

The Code has broadly similar requirements and sets out the following specific actions:

- Incentivise and reward businesses for good levels of compliance.
- Hold discussions with a business when considering formal enforcement action (exemption for serious breach or compromising the action).
- Apply sanctions and penalties consistent with the Macrory principles.
- Publish an enforcement policy.
- Measure outcomes.
- Justify the choice of enforcement actions year on year to interested parties.
- Follow up enforcement actions where appropriate.
- Enforce and apply penalties in a transparent manner.
- Avoid perverse incentives that might influence the choice of sanctioning response.
- Provide clear reasons for any formal enforcement action at the time it is taken, explain complaints and appeals processes and place these in writing at the earliest opportunity.
- Ensure inspectors are able to interpret and apply relevant legal requirements and enforcement policies fairly and consistently within and across regulatory agencies.

Sanctions and penalties

How are sanctions and penalties to be decided?

The Code requires sanctions and penalties to be applied according to the following principles, which emerged from the Macrory review:

- Aim to change the behaviour of the offender.
- Aim to eliminate financial gain or benefit from non-compliance.
- Be responsive and consider what is appropriate for the particular offender and offence.
- Be proportionate to the nature of the offence and the harm caused.
- Aim to repair the harm done by the offence, where appropriate.
- Aim to deter non-compliance in future.