

LEGAL ADVISORY COMMISSION OF THE GENERAL SYNOD

**THE APPLICATION OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005
IN RELATION TO PARISH CHURCHES AND THE PAROCHIAL USE OF OTHER
PREMISES**

The general effect of the Order

1. The purpose of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) was to harmonise and simplify the previously existing patchwork of legislation concerning fire precautions and prevention. Its requirements are therefore expressed in broad terms which are not easily related to the legal framework of the Church of England.
2. Subject to some specific and immaterial exceptions in article 6(1), the Order applies to all non-domestic premises. Places of worship are included in its wide ambit.
3. The key provisions concerning the imposition of the duties about fire safety under Part 2 of the Order (including matters such as risk assessment, evacuation of premises and means of fire-fighting) are contained in articles 3 and 5. These duties are, by article 5, imposed upon the ‘responsible person’, who is defined in article 3 as follows:

Meaning of “responsible person”

3. In this Order “responsible person” means—

(a) in relation to a workplace, the employer, if the workplace is to any extent under his control;

(b) in relation to any premises not falling within paragraph (a)—

(i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or

(ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.

In addition, article 5(3) provides that any duty imposed upon the responsible person is also imposed upon every other person “who has, to any extent, control of the premises so far as the requirements [of Part 2] relate to matters within his control”. The concept of control is further elaborated by article 5(4), which provides

“(4) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

(a) the maintenance or repair of any premises, including anything in or on premises; or

(b) the safety of any premises,

that person is to be treated, for the purposes of paragraph (3), as being a person who has control of the premises to the extent that his obligation so extends.”

4. By section 23(1) of the Interpretation Act 1978, subordinate legislation, including this Order, has to be construed in accordance with the Act. By section 5 and Schedule I, a person includes a body of persons corporate or unincorporated. Thus the expression ‘responsible person’ in article 3 extends both to an individual and to a body of persons. (For example, a secular employer within article 3(a) is often a partnership or a limited company.)
5. The overall scheme of articles 3 and 5 is to single out as the responsible person an employer, if there is one; in the absence of an employer, whoever is carrying on a trade, business or undertaking; and in default of either, the owner of the premises. In each of these cases some degree of control over the premises is a necessary ingredient. In addition to the responsible person, any other party who exercises control over the premises may owe a duty under article 5(3) of the Order.
6. The concept of the responsible person is not to be confused with that of the ‘competent person’, one or more of whom are required to discharge specific functions under Part 2 of the Order at the nomination of the responsible person.

The position of the parochial church council

7. By section 3 of the Parochial Church Councils (Powers) Measure 1956, the PCC is a body corporate and hence within the definition of a ‘person’ in Schedule I to the Interpretation Act 1978. Section 4(1)(ii) of the Measure vested in the PCC

“The like powers duties and liabilities as, immediately before the relevant date, the churchwardens ... had with respect to— ...

(a) The care maintenance preservation and insurance of the fabric of the church and the goods and ornaments thereof ...”

8. A broad construction is given to the word ‘undertaking’ in the field of health and safety legislation (*R v. Mara* [1987] 1 WLR 87). The powers, duties and liabilities of the PCC under the 1956 Measure collectively amount to an undertaking which will bring it within the article 3(b)(i) definition of

“a person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of [an] undertaking (for profit or not) ...”

Thus the PCC in its corporate capacity is to be viewed in law as the responsible person.

9. If the PCC delegates the control of fire safety matters to a particular individual, for instance to a churchwarden, such a person is likely to become directly liable to comply with Part 2 of the Order, in addition to the PCC, by reason of article 5(3). Non-compliance with Part 2 of the Order is a criminal offence; see Part 4. It may be thought undesirable to make any arrangement which has the effect of exposing a PCC member or other parishioner to personal legal liability.

The parochial church council as employer

10. Sometimes the legal relationship of employer and employee exists between the PCC and those working as organist, vergger, parish administrator and the like. In such circumstances the PCC, as employer, will be treated as the responsible person under article 3(a) instead of article 3(b).

In both instances the legal consequences are the same; but if there are five or more employees, compliance with articles 9 and 10 is made more onerous in terms of record-keeping.

The minister and churchwardens

11. The minister (whether the incumbent or the holder of a licence) is by ecclesiastical law entrusted with various powers and duties in relation to the church building. Examples appear in Canons B 8 (vesture), B 20 (music), C 24 (services and sermons), F 8 (bell-ringing) and F 16 (plays, concerts and the like). Canon F 16.3, which specifically required the minister to consult appropriate authorities in respect of fire and other precautions when the church was used for plays and similar public events, supplemented section 59 (now repealed) of the Public Health Act 1936. With the introduction of the 2005 Order, Canon F 16.3 is now obsolete, at least in relation to fire precautions. It is not an aid to the construction of article 3 of the Order.
12. The minister's powers and duties are essentially spiritual and liturgical in character. They do not endow the minister with the physical control of the church exercised by the PCC. Accordingly the minister falls outside the scope of the definition of the responsible person given in article 3(b)(i). Moreover an incumbent in whom the freehold of the church is vested is not the responsible person, as owner, under article 3(b)(ii), because the requirements of article 3(b)(i) are already fulfilled by the PCC.
13. The churchwardens, separately from the PCC, do not come within the terms of article 3(b)(i) because of the transfer of their pre-existing powers and duties to the PCC under section 4(1)(ii) of the Parochial Church Councils (Powers) Measure 1956.

Leases under the Pastoral (Amendment) Measure 2006 and licences

14. Where part of a church is the subject of a lease or licence whereby responsibilities for maintenance, repair or safety are assumed by the lessee or licensee, that party becomes the responsible person in relation to the demised or licensed part of the premises by virtue of article 5(3) and (4). Responsible persons in respect of the separate parts are, however, required by article 22 to co-operate together and to co-ordinate the measures which they adopt.
15. The identity of the responsible person is unlikely to be affected by the informal use of a church for meetings, playgroups, concerts and the like. The organisers of such events will normally have sufficient temporary control of the building to impose upon them, under article 5(3), a duty to comply with Part 2 of the Order. The article 5(3) duty is in addition to the duty resting on the responsible person.

Premises other than a church building

16. The previous paragraphs apply equally to premises other than a church building which are under the control of the PCC. Where church halls or similar premises are, however, managed by a separate body of trustees, those trustees collectively will normally be the responsible person for the purposes of the Order. If special events such as church fetes are held in premises not occupied by the PCC, it is highly desirable to establish in advance who is the responsible person for the purposes of fire safety. It should also be ensured that the responsible person has secured due compliance with Part 2 of the Order.

Sharing of Church Buildings Act 1969

17. Legal arrangements made under the Sharing of Church Buildings Act 1969 may involve the joint denominational ownership of a church building and its management by trustees upon whom section 3(5) places “responsibility under any statutory or other legal provision”. In such a case the trustees will have the requisite control of the building to become the responsible person under article 3. Where an existing Anglican church building remains “in the sole ownership of the Church of England” pursuant to section 5(1) and functions as a parish church, in the absence of any contrary provision in the sharing agreement the PCC will continue to fulfil the role of responsible person. Sharing agreements commonly provide for a Joint Council (on which the sharing churches are represented) overseeing a separate body charged with the management and repair of the church building. This body, often described as the ‘responsible authority’, will normally become the responsible person in place of the PCC. In all instances of sharing under the 1969 Act the impact of the Order will, however, depend upon the precise terms of the sharing agreement and the trusts taking effect under it.

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