



## British Safety Council response to Fire Safety Consultation

Submission 12th October 2020

[www.gov.uk/government/consultations/fire-safety](http://www.gov.uk/government/consultations/fire-safety)

The British Safety Council has responded to a limited number of questions in the consultation based on discussion with its members and experts.

### Section 1 – improvements to Fire Safety Order

This section sets out a range of proposals across those areas identified through the Call for Evidence (CfE) on the Regulatory Reform (Fire Safety) Order 2005 (FSO) or other means that require further consideration and action. Where these proposals require legislative change, the intention is to deliver these through secondary legislation under the FSO where appropriate, or where an amendment to the FSO is required, through primary legislation in the draft Building Safety Bill.

- Guidance
- Responsible Person
- Quality of Fire Risk Assessment (FRA)
- Provision of information
- Enforcement and Sanctions
- Maintenance, including role of residents
- Higher Risk workplaces
- Fees and Charges
- Charging for False Fire alarms

#### Responsible Persons (RP)

**Proposal 1:** To help the identification of RPs and promote their self-identification, the Government proposes amending the FSO to require all RPs to record (and as necessary update) who they are, the extent of their responsibility under the Order, and their contact information.

We are also seeking views on whether the information RPs are required to provide should include a UK based contact address. This also reflects a requirement in the draft Building Safety Bill to require Accountable Persons to have a UK based address.

**Proposal 2:** To ensure a whole building approach to the management of fire safety where responsibility is shared, the Government proposes to amend the FSO and establish a new requirement under Article 22 of the FSO on all RPs to identify themselves to all other RPs (and where applicable Accountable Persons and/or Building Safety Managers as proposed under the Building Safety Bill) where they share or have duties in respect of the same premises.

To support this proposal, the draft Building Safety Bill is seeking to amend Article 22 of the FSO to require RPs to cooperate with the Accountable Person(s) and places a reciprocal requirement on the Accountable Person. This intends to ensure that the fire safety of the building, as a whole, is effectively managed.

**Q11. To what extent do you agree that the requirements set out in proposal 1 be extended to others that have control of the premises, such as dutyholders?**

Yes, registration of the RP will help focus attention on the responsibilities of the role. It is considered prudent to keep the requirements for the Responsible Person in line with the new Accountable Person.

**Q14. Do you have any other comments to further support your answers above?**

It would be common sense to stipulate a RP has a UK address and ACOP's are better than guidance.

## **Quality of Fire Risk Assessment**

Respondents to the CfE deemed the 'competent person' requirements in the FSO to be insufficient and lacking in clarity in relation to qualifications, training and experience required with limited benchmarking of competence.

**Proposal 3:** The Government proposes to amend the FSO to require that any person engaged by the RP to undertake all or any part of the fire risk assessment must be competent.

**Proposal 4:** Where an individual is engaged by the RP to undertake any or all of the fire risk assessment, the Government proposes to make it a statutory requirement that their name and contact information are recorded within the completed fire risk assessment.

This will enable better identification of those accountable for completion of fire risk assessments as well as facilitating enforcing authorities when assessing and enforcing against non-compliance with the Order.

**Proposal 5:** To ensure a consistent approach is taken to fire safety across all premises regulated by the Order, the Government proposes to require all RPs to record their fire risk assessments. This will:

- replace the current requirement to only record specific prescribed information; and
- remove current requirements that the RP must record the information prescribed by Article 9(7) only where:
  - s/he employs five or more employees;
  - a licence under an enactment is in force in relation to the premises; or
  - an alterations notice requiring this is in force in relation to the premises.

**Q15. To what extent do you agree that the FSO should include a competency requirement for fire risk assessors and other fire professionals engaged by the RPs?**

Sufficient competency is vital and should be mandatory.

**Q16. To what extent do you agree that the name and contact information of an individual engaged by the RPs to undertake any or all of the fire risk assessment, should be recorded within the completed fire risk assessment.**

Yes, the name of the assessor and their business address should be recorded.

**Q17. Please set out any further information you think fire risk assessments should include.**

Ideally the fire risk assessments should record the qualifications and memberships of the assessor. Fire risk assessment organisations should have recognised industry accreditations (such as BAFE SP205) to demonstrate their processes are robust. This should also be stated in the fire risk assessment.

The consultation document does not cover workplaces that are construction sites. The skill set required for undertaking a FRA of a finished building is different to that required to do a FRA on a construction site where you need to comment on what is required as the site moves from ground works to erecting a structure, be it steel frame, concrete frame, timber frame etc.

## **Enforcement and sanctions**

Fire and Rescue Authorities (FRAs) are the enforcing authorities for the majority of premises to which the FSO applies. Under the FSO, the powers of inspectors enable them to enter premises (without force) to carry out an audit, identify the RP in relation to the premises, establish whether the FSO has been complied with and to decide whether to take enforcement action and/or prosecute a RP or any other person for noncompliance with the FSO. There are a range of enforcement actions that an enforcing authority can take, including to serve an alterations notice, enforcement notice or prohibition notice.

Although no specific legal changes to the FSO were identified through the CfE process, we are looking at the sufficiency of the level of fines for specific offences.

A person is liable to a level 3 fine (which carries a maximum penalty of £1,000) on summary conviction, where they have:

1. Failed to comply with any requirements imposed by an Inspector during the course of their investigation (including, but not limited to, providing the Inspector with the facilities and assistance they require to exercise their powers
2. Impersonated an Inspector with intent to deceive; and
3. Failed to comply with requirements relating to the installation of fire-fighter switches for luminous tube signs.

### **Q31. To what extent do you agree that a level 3 fine (£1,000) provides a suitable deterrent and carries a suitable financial penalty?**

£1000 penalty is totally insufficient and not a suitable deterrent given the severity of their actions.

### **Q32. To what extent do you agree that a level 4 fine (£2,500) would provide a suitable deterrent and carry a suitable financial penalty?**

Still not enough. Needs to be above £10K at least.

### **Q34. Do you have any other comments to further support your answers above?**

N/A

## **Higher risk workplaces**

The FSO is often referred to as workplace legislation. However, as well as requiring RPs to ensure the safety of their employees from fire in their places of work, the FSO also requires RPs to ensure premises are safe (from fire) in relation to relevant persons who are not his employees, namely

those persons lawfully on the premises and in its immediate vicinity

**Q45. What risk factors are of most concern to you in higher risk workplaces (such as prisons, hospitals, sheltered and supported housing, residential educational buildings, care homes) and why? For example:**

- a) Occupancy (who is on the premises: children, patients, the elderly, etc.);
- b) Use of premises (what activity is carried out);
- c) Existing fire strategy;
- d) Design and construction of the building (e.g., layout, materials, size, etc.);
- e) Other – please specify.

Many of these buildings rely on progressive evacuation and/or stay-put policies. Suitable and sufficient fire compartmentation is vital to facilitate these types of evacuation.

**Q46. What additional fire precautions requirements – over and above those already required under the Order – should apply to higher risk workplaces to increase fire safety?**

- a) Provision and maintenance of means of escape;
- b) Provision and maintenance of firefighting systems;
- c) Provision of employee training on fire safety;
- d) Provision of sufficient employees present on the premises to ensure means of escape can be safely and effectively used all times;
- e) Annual review of the fire risk assessment;
- f) Record keeping demonstrating the specific requirements;
- g) Other – please specify.

The location, rating and integrity of the building's fire compartmentation. Too many building which rely on progressive evacuation or stay-put policies have insufficient fire compartmentation

## **Fees and charges**

In her Independent Review of Building Regulations and Fire Safety, Dame Judith Hackitt recommended that regulatory functions under the new building safety regime should be fully cost recoverable highlighting that this is 'a proportionate approach where those whose work needs the highest level of intervention and oversight should pay the highest cost.

The FSO will continue to apply as it currently does alongside the proposed provisions in the draft Building Safety Bill for a new enhanced regime for High Rise Residential Buildings (HRRBs). This will create a situation where enforcement activity undertaken through the proposed new Building Safety Regulator in a high-rise residential block is likely to be chargeable whereas enforcement activity pursued under the FSO in the non-domestic parts of the same premises would not be.

**Proposal 8:** To remove the provisions under the FRSA 2004 which prohibit FRAs from charging for action taken in their capacity as enforcing authorities under the FSO – both to align where relevant with the draft Building Safety Bill but also in relation to all action taken in FRAs capacity as enforcing authorities under the FSO.

Specifically, we also want to seek views in relation to levels of charging and FRAs' level of appetite to charge. We are also seeking evidence and insight on how cost recovery would encourage greater compliance with the FSO.

**Q51. To what extent do you agree that the proposed ability to charge would incentivise compliance with the FSO?**

It is likely to have a positive effect.

**Q53. To what extent do you agree that FSO Inspectors should be able to charge only for unsatisfactory audits that result in:**

**a) Informal notifications; b) Enforcement notices; c) Prohibition notices; and d) Alteration notices**

Should be able to charge for enforcement, prohibition and alteration notices.

**Q55. Please share any thoughts you have on levels of charging and when and how these charges should be applied by FRAs if provision was made for charging in relation to FSO activity.**

Should be in line with those fees charged by the HSE for health & safety action.

## **False Fire Alarms**

False fire alarms (FFA) impact on the deployment of Fire and Rescue Service (FRS) resources. Although there has been some reduction in FFAs over the last decade, there is significant potential to go further. In the year ending December 2019, 41% (229,882) of all incidents attended by FRSs across England were FFAs.

There are ways in which FRSs can attempt to reduce FFAs, one of which is through charging. Where FRAs want to charge, the lack of clarity with terminology, and lack of alignment with BS 5839-1, appears to be a factor in their reticence to do so.

**Q57. To what extent do you agree that charging can be a beneficial tool when attempting to reduce FFA and encourage behaviour change?**

FFAs place an inappropriate strain on a vital emergency service. Much can be done by RP's to reduce FFAs to an absolute minimum through better procedures and controls. The fire risk assessment should consider the configuration of the fire alarm system and how it could be modified to reduce false alarms whilst reliably detecting a fire should it occur. This should not be a barrier to charging clients for FFA call outs.

**Q65. To what extent do you agree that we should take steps to change the current approach to charging under 18C(3) FRSA?**

See Q57 above.

## Section 2 – implementing Phase 1 recommendations of Grenfell Tower Inquiry

The recommendations relate primarily to requirements on building owners and managers to provide information to Fire and Rescue Services to ensure they can provide an effective operational response, and to provide assurance and additional safety measures to residents.

The draft Building Safety Bill will put in place an enhanced safety framework for high-rise residential buildings, taking forward the relevant recommendations from Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety.

Alignment between the two regulatory regimes (Fire Safety Order and draft Building Safety Bill) will be important. However, it is essential to differentiate between the intentions of the draft Building Safety Bill and the FSO (including any regulations made under the Order). Many of the Phase 1 recommendations are targeted to ensure Fire and Rescue Services have the information that they need to provide an effective operational response in the event of a fire, and that residents know how they can evacuate in the event of a fire. The draft Building Safety Bill does not have the same focus on the operational response to fire.

There is likely to be some overlap between the two regulatory regimes once the Building Safety Act is commenced.

- Definitions of height
- External walls
- Plans
- Premises Information Boxes
- Lifts
- Evacuation Plans
- Personal Emergencies
- Information to residents
- Fire doors
- Non-legislative work

### Plans

Recommendation 33.12 (a) states that:

*The owner and manager of every high-rise residential building be **required by law**:*

*a) to provide their local Fire and Rescue Services with up-to-date plans in both paper and electronic form of every floor of the building identifying the location of key fire safety systems.*

To avoid Fire and Rescue Services taking on additional administrative burdens which might draw resource away from protection work, it is proposed that RPs only share a digital version of the floor plans with Fire and Rescue Services.

**Proposal 12:** In line with the Inquiry's recommendation, we propose to require that RPs provide the most up-to-date floor plans, identifying the location of key fire-fighting systems, to their local Fire and Rescue Services in an electronic format. Plans should be kept up to date and where there has been a change, new plans should be provided to the local Fire and Rescue Service. We do not propose to require that RPs share paper versions of floor plans with Fire and Rescue Services.

**Proposal 13:** We propose to go further by requiring RPs to provide their local Fire and Rescue

Service with an additional single page building plan, which should include the location of all key firefighting equipment.

**Proposal 14:** We propose to set out a national standard format to support the RP in collating this information as well as local Fire and Rescue Services in receiving it, for example assisting the provision of supplementary training to their staff and to drive consistency across the sectors. These proposals will be supplemented by guidance to assist both compliance and enforcement activity.

**Q71. To what extent do you agree with this proposed approach to make regulations as described above? Please explain.**

Agree with the production of the plans however these should be stored on site in an information box for use by the FRS in an emergency. Routinely submitting drawings to the FRS may result in some landlord's believing the FRS will advise if anything is wrong rather than taking on the responsibility themselves.

## Lifts

Recommendation 33.13 states that:

1. a) *The owner and manager of every high-rise residential building **be required by law** to carry out regular inspections of any lifts that are designed to be used by firefighters in an emergency and to report the results of such inspections to their local fire and rescue service at monthly intervals;*
2. b) *The owner and manager of every high-rise residential building **be required by law** to carry out regular tests of the mechanism which allows firefighters to take control of the lifts and to inform their local fire and rescue service at monthly intervals that they have done so (p. 774).*

**Proposal 18:** We propose to require that relevant RPs in high-rise residential premises undertake monthly checks of any lifts within the building that are designed to be used by fire-fighters and of the mechanism which allows fire-fighters to take control of lifts as set out in the Inquiry recommendation. Where RPs identify, either through the monthly checks or via any other routine checks, that a relevant lift or mechanism has a fault or is out of service, they must report it to the Fire and Rescue Service. A standard threshold will need to be set for the reporting timeframe to the local Fire and Rescue Services.

**Proposal 19:** We propose to go further by enhancing this proposal to maximise the safety of residents in the following ways:

- Some buildings may not have lifts specifically designed for use by fire-fighters as set out in the Inquiry recommendation, and therefore we propose to require RPs to apply this approach to all lifts within relevant buildings.
- There are other pieces of fire-fighting equipment in a high-rise building which are also critical in the event of a fire, for example dry risers and smoke control systems, and therefore we propose to require RPs to apply the above approach to these pieces of equipment as well. This means that for all specified key fire-fighting equipment RPs must undertake monthly inspections or tests, with exception reporting of failures to Fire and Rescue Services.
- Where monthly checks on a piece of equipment are required these should be recorded in an open and transparent way that is accessible to residents. This will provide residents with the information they need to hold RPs to account for any failures to comply with this duty.

**Q82. To what extent do you agree with this proposed approach to make regulations as described above? Please explain.**

A minimum threshold for the mandatory frequency of inspections would ensure a standardised approach, remove any ambiguity from the requirement and eliminate the potential for cost implications to influence the inspection regime. This should be combined with fire risk assessments, with outcomes dictating actual frequency of inspections which could be more often than the minimum threshold.

## Evacuation Plans

Recommendation 33.22 (c) states that: *c) that the owner and manager of every high-rise residential building be **required by law to draw up and keep under regular review evacuation plans, copies of which are to be provided in electronic and paper form to their local fire and rescue service and placed in an information box on the premises** (p. 777).*

**Proposal 20:** In line with the Inquiry's recommendation, we propose to require that relevant RPs draw up and keep under regular review evacuation plans, copies of which are to be sent electronically to Fire and Rescue Services and placed in a Premises Information Box on site (see the related proposal in section 2.4). We do not propose that RPs provide a paper copy of the evacuation plan to Fire and Rescue Services.

**Proposal 21:** We also propose to test whether this proposal should be extended to cover all multi-occupied residential buildings of 11 metres and above, rather than specifically high-rise residential buildings of 18 metres and above or more than six storeys (whichever is reached first).

**Q89. To what extent do you agree with the proposed approach to make regulations as described above? Please explain.**

An evacuation plan should be produced for all buildings 11 metres and above as the risk does not sufficiently diminish between the two heights.

Evacuation plans should be communicated to all tenants. The plans should be stored in an information box at the premises for use by the FRS if needed.

## Fire Doors

**Recommendation 33.29 (b) states that:**

*33.29 (b) The owner and manager of every residential building containing separate dwellings (whether or not they are high-rise buildings) be **required by law to carry out checks at not less than three-monthly intervals to ensure that all fire doors are fitted with effective self-closing devices in working order.***

**Proposal 27:** We propose to require a RP to undertake prescribed checks to ensure effective self-closing devices are in working order in those multi-occupied residential buildings as follows:

For building of 18 metres and above (or more than six storeys (whichever is reached first)).

- At not less than three-monthly intervals, on all fire doors exclusively located in the non-domestic parts;
- At not less than six-monthly intervals, on all flat entrance doors which are fire doors.

For buildings of 11 – 18 metres



- At not less than six-monthly intervals, on all fire doors exclusively located in the non-domestic parts;
- At not less than yearly intervals, on all flat entrance doors which are fire doors.

**Proposal 28:** We propose to impose a requirement on the RP to keep records in pursuance of these new requirements.

We are also seeking views on:

- all fire doors in buildings under 11 metres, whether guidance on the checks and their frequency (which could take account of the age of the building, height and risk profile), alongside the fire risk assessment process, is a reasonable and practicable response to the risk in these buildings;
- expanding the proposals to require that checks take place on other parts of doors such as gaps, seals and hinges; and
- the adequacy of the current duties of the RP and those of co-operation on dutyholders and/or other occupants to discharge the proposed new requirements.

**Q104. To what extent do you agree with this proposed approach as described above?**

Flat entrance doors perform a vital role in protecting the means of escape. The door closing devices should be regularly checked.

A minimum threshold for the mandatory frequency of inspections would ensure a standardised approach, remove any ambiguity from the requirement and eliminate the potential for cost implications to influence the inspection regime. This should be combined with fire risk assessments, with outcomes dictating actual frequency of inspections which could be more often than the minimum threshold.

To fully test the door's closing ability, each tenancy will need to be accessed which could prove problematic. Inspections of the closing mechanism should be combined with other fire door safety checks.

## **Non-Legislative recommendations from Phase 1**

### **Wayfinding signage**

The change to Approved Document B on wayfinding signage is in line with the Phase 1 recommendation, although the Inquiry did not recommend a trigger height.

**Proposal 31:** The Government proposes to include a requirement for wayfinding signage to be introduced in existing multi-occupied residential buildings of 11 metres and above through bespoke regulations for these buildings. This would align with and go beyond the recommendation made by the Grenfell Tower Inquiry Phase 1 report and guidance would also be amended to reflect the new requirement, providing advice on the appropriate size, material and format.

### **Sprinklers**

Sprinklers are an effective fire protection measure and installing them is one of a number of options that RPs can employ to achieve adequate levels of fire safety within buildings.

**Q112. To what extent do you agree that the installation of sprinklers in existing buildings should continue to be guided by the fire risk assessment process rather than be made mandatory under the FSO?**

We advocate the mandatory approach (for the reasons outlined in relation to lifts and fire doors above). Given the cost of retrospective installation can be considerable, there is some justification for the “reasonably practicable” principle to be applied through an incremental risk-based phased installation.

**Q113. To what extent do you agree that regulations should be made requiring wayfinding signage to be introduced in multi-occupied residential buildings?**

Yes it should be - appropriate signage which is visible in all situations is an important part of the overall fire strategy for a building.

## **Section 3 – building control**

This section sets out a range of proposals to strengthen the regulatory framework for how building control bodies consult with the Fire and Rescue Authorities on plans for building work, and for the effective handover of fire safety information on completion of work to allow the building owner to operate the building safely.

There are many examples of good practice and strong working relationships between building control bodies and Fire and Rescue Authorities. However, stakeholders have raised concerns about the current arrangements. These include that information in plans about fire safety matters has been identified as insufficient, inconsistent, or supplied too late. Responses from the Fire and Rescue Authorities may be received late by building control bodies which makes it difficult to meet the statutory deadlines for approving plans.

There are also concerns that fire safety information handed over under Regulation 38 may be inadequate and of little use to the Responsible Person. Dame Judith Hackett’s report identified that fire safety information is often not present or is insufficient, which may mean that an adequate fire risk assessment cannot be undertaken.

- Better information
- Plans certificates
- Timely consultation
- Appropriate response times
- Enabling dispute resolution
- Better guidance
- Fire Safety Information
- Impacts

### **Plans certificate**

Where an Approved Inspector is the building control body, they can, at the request of the person undertaking the work, issue a plans certificate to the local authority alongside or after the initial notice. A plans certificate is a statement confirming that the Approved Inspector has checked the plans of the proposed building work and considers them to be compliant with building regulations. This is currently a voluntary arrangement.

We recognise the arguments for mandating plans certificates for buildings covered by the FSO, however there are some important issues to consider. Detailed design information may not be fully available at the outset of a project and design changes may be made as work progresses.

As an alternative to mandatory plans certificates, further guidance could be provided on defining

what adequate plans under Regulation 12 of the Building (Approved Inspector) Regulations may mean.

**Q119. To what extent do you agree that plans certificates should be mandated for FSO buildings?**

Plan Certificates could be used to confirm the adequacy of the current design but there would need to be a facility to caveat the approval where information or specific detail is unavailable.

**Q120. To what extent do you agree that plans certificates could allow for conditions to be set?**

Yes, they could be issued with conditions particularly where insufficient information exists.

**Q123. Please explain your views on plans certificates further:**

Some Approved Inspectors are already struggling with Professional Indemnity or Public Liability insurance. It could effectively mean the Approved Inspectors are taking the design liability away from the designers which would be a backward step.