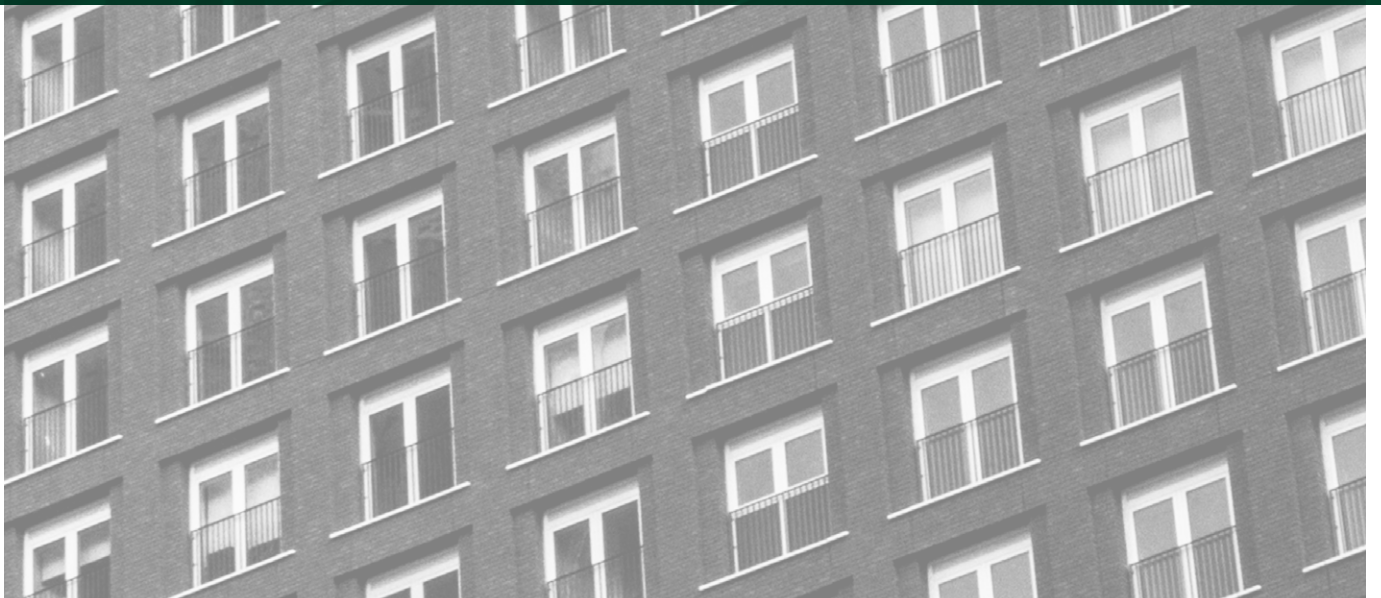




## **White Paper**

# **Firing up our new fire legislation**

August 2022



## Firing up our new fire legislation

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Not since the introduction of the Regulatory Reform (Fire Safety) Order 2005 has the legislative framework around fire seen so much change. The now Fire Safety Act 2021 and Building Safety Act 2022 are consequences of the tragedy at Grenfell Tower in 2017, which facilitated Judith Hackitt's wider review of building regulations and fire safety between December 2017 to May 2018.

Commissioned by the government, the focus of the review was "to look at the regulatory framework around the construction, maintenance and ongoing use of buildings" and with Grenfell in mind initially, it was to consider multi-occupied, high-rise residential buildings.

This month, as well as providing a refresher on your existing duties, we take a look at the current situation regarding the new Acts and what their introduction could mean for those responsible for managing buildings.



## 1. The Regulatory Reform (Fire Safety) Order (RR(FS)O) 2005

Enacted in 2005 and coming into force on 1st October 2006, the RR(FS)O or "Fire Safety Order" replaced over 100 pieces of previous fire safety legislation, including the Fire Precautions Act 1971, into one simple order.

The document itself has 53 articles within 5 parts, and 5 supporting schedules, covering:

- a. Part 1 - General
- b. Part 2 - Fire Safety Duties
- c. Part 3 - Enforcement
- d. Part 4 - Offences and Appeals
- e. Part 5 - Miscellaneous

Fundamentally, it requires "any person who has some control in a premises MUST take reasonable steps to reduce the risk from fire and make sure people can safely escape if a fire occurs".

In terms of who that person may be, Article 3 of the RR(FS)O defines a responsible person as:

"(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."

Together with this, Article 5 lays out the "duties" under the order, which cover:

"(1) Where the premises are a workplace, the responsible person must ensure that any duty imposed (by regulation) is complied with in respect of those premises

(2) Where the premises are not a workplace, the responsible person must ensure that any duty imposed by regulation is complied with in respect of those premises (to matters within his control)

(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...as being a person who has control of the premises to the extent that his obligation so extends."

For many organisations the roles of the responsible person and duties are clearly identifiable. For others, particularly in premises where different style of occupation and activity occur and potentially multiple responsible persons exist, much greater thought is needed.

The RR(FS)O also defines “general fire precautions” in relation to premises as meaning:

- Reducing the risk of fire;
- Means of escape;
- Means of fire fighting;
- Means for detecting fires; and
- Arrangements for actions (i.e. instruction and training)

Articles 8 to 23 look at these and the more detailed duties for each element covering (what the responsible person must do), and as a refresher on your current responsibilities they are:

- **Article 8** - Duty to take general fire precautions – “take such general fire precautions as will ensure, so far as is reasonably practicable, the safety of any of his employees”;
- **Article 9** - Risk assessment – “make a suitable and sufficient assessment of the risks to which relevant persons are exposed”
- **Article 10** - Principles of prevention – including for example, avoiding risks, evaluating the risks which cannot be avoided, combating the risks at source, adapting to technical progress and giving collective protective measures priority over individual protective measures.
- **Article 11** - Fire Safety arrangements – appropriate arrangements for the “effective planning, organisation, control, monitoring and review of the preventive and protective measures”, based on the nature of your activities and size of your undertaking;
- **Article 12** - Eliminate or reduce dangerous substances – where existing that the “risk to relevant persons related to the presence of the substance is either eliminated or reduced so far as is reasonably practicable”;
- **Article 13** – Fire fighting and detection – that premises are to an appropriate extent, equipped with appropriate fire-fighting equipment detectors and alarms (with any non-automatic equipment easily accessible, simple to use and indicated by signs);
- **Article 14** – Emergency routes and exits – all emergency routes from premises are kept clear at all times
- **Article 15** – Procedures for serious and imminent danger – have procedures (including safety drills) and appropriate people in place in the event of fire evacuation.
- **Article 16** – Additional emergency measures re dangerous substances – procedures, warnings and escape facilities etc. “to safeguard the safety of relevant persons arising from an accident, incident or emergency related to the presence of a dangerous substance in or on the premises”;
- **Article 17** – Maintenance – that any equipment and devices provided in respect of the premises are subject to a suitable system of maintenance, maintained in an efficient state, good repair and effective working order;
- **Article 18** - Safety assistance – appoint one or more competent persons to support the responsible person in their duties;



- **Article 19** – Provision of information to employees – provide comprehensive and relevant information on such areas as the risks identified by the risk assessment, the preventative and protective procedures (including evacuations), fire wardens, marshals, etc.;
- **Article 20** – Provision of information to employers and the self employed from outside undertakings – the risks involved and the preventative and protective procedures (including evacuations) is informed to anyone working on the premises from and outside undertaking;
- **Article 21** -Training – adequate training for employees at induction and relevant times thereafter;
- **Article 22** – Co-operation and co-ordination – where two or more responsible persons share duties, that they:
  - “(a) co-operate with the other responsible person concerned so far as is necessary to enable them to comply with the requirements;
  - (b) (taking into account the nature of his activities) take all reasonable steps to co-ordinate the measures he takes to comply with the requirements (and the measures the other responsible persons are taking to comply with the requirements); and
  - (c) take all reasonable steps to inform the other responsible persons concerned of the risks to relevant persons arising out of or in connection with the conduct by him of his undertaking”
- **Article 23** – General duties of employees at work – every employee at work must:
  - “(a) take reasonable care for the safety of himself and of other relevant persons who may be affected by his acts or omissions at work;
  - (b) as regards any duty or requirement imposed on his employer by or under any provision of this Order, co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with; and
  - (c) inform his employer or any other employee with specific responsibility for the safety of his fellow employees – of any risks or dangerous situations/occurrences”.

Parts 3 and 4 of the RR(FS)O, as their titles suggest cover enforcement (enforcing authorities, powers of inspectors, notices, etc.) and offences and appeals. The final part, Part 5 – Miscellaneous, covering as the name suggests a host of areas affected by the new legislation including Repeals, revocations, amendments and transitional provisions.

With a greater focus on fire prevention and a strict liability being placed on duty holders the RR(FS)O, while not perfect, has continued to see the overarching statistics for workplace fires improve and gives a clear outline of what good fire management should include/cover.



## 2. The Fire Safety Act 2021

As a major outcome of the Grenfell tragedy, the Fire Safety Act 2021 received Royal Assent on 29th April 2021 and was enacted on 8th May 2022 in England and 1st October 2021 in Wales. Scotland and Northern Ireland have taken slightly different approaches. The Fire Safety Act applies to multi-occupied residential buildings already in occupation.

The Act itself covers three areas:

1. Premises to which the Fire Safety Order applies
2. Power to change premises to which the Fire Safety Order applies
3. Risk based guidance about the discharge of duties under the Fire Safety Order

The Act clarifies the scope of the Regulatory Reform (Fire Safety Order) 2005 to make it clear that the responsible person or dutyholder for multi-occupied, residential buildings must manage and reduce the risk associated with external cladding (walls and structure) and fire doors.

Where a building which contains two or more sets of domestic premises (i.e. a number of flats), the things to which this order applies include:

The building's structure and external walls (including doors, windows, anything attached to the exterior of the walls e.g. balconies or solar panels) and any common parts;

All doors between the domestic premises and common parts.

The responsible person has a duty to ensure that an appropriate fire risk assessment is required to assess fire safety risks relevant to both workplaces and buildings with two or more sets of domestic premises.

GOV.UK also highlight that:

"A new Fire Risk Assessment Prioritisation Tool will be made available from commencement of sections 1 and 3 the Fire Safety Act. The prioritisation tool is an online tool designed to support Responsible Persons to develop a prioritisation strategy for updating their fire risk assessments following commencement of section 1 of the Fire Safety Act."

In supporting the assessment work guidance includes:

- PAS 79-2:2020, Fire risk assessment – Housing – Part 2: Code of Practice\*; and
- PAS 9980 provides a methodology for the fire risk appraisal of external wall construction and cladding in existing multi-occupied residential buildings.

\*This has currently been withdrawn pending development of a British Standard.

Some further information can be found at:

[Fire Safety \(England\) Regulations 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

[The Fire Safety \(England\) Regulations 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

### 3. The Building Safety Act 2022

The Building Safety Act 2022 received Royal Assent and became an Act of Parliament on 28th April 2022. Unlike the Fire Safety Act 2021, the Building Safety Act 2022 focuses on the entire timeline for the development of high-rise multi-occupied properties from design stage, all the way through to occupation, including the management of any relevant ongoing information (Golden Thread). The Act also updates and amends a range of other legislation including the Defective Premises Act 1972, Building Act 1984, Landlord & Tenant Act 1985 and Regulatory Reform (Fire Safety) Order 2005.

The Act itself contains 6 parts (and 11 schedules) and covers:

- **1. Overview (Section 1)** – “provisions intended to secure the safety of people in or about buildings and to improve the standard of buildings.”;
- **2. The Regulator and its functions (Section 2 to 30)** - contains provision about the building safety regulator and its functions in relation to buildings in England;
- **3. The Building Act 1984 (Sections 31 to 60)** and its amendment including
  - (a) provide that the regulator is the building control authority in relation to higher-risk buildings in England, and
  - (b) require the regulator (for England) and the Welsh Ministers (for Wales) to establish and maintain registers of building control approvers and building inspectors;
- **4. Higher-risk buildings (Sections 61 to 115)** - in England, and imposes duties on accountable persons;
- **5. Other provisions on safety, standards etc., (Sections 116 to 160)** including:
  - (a) provisions about remediation and redress;
  - (b) provision requiring a new homes ombudsman scheme to be established;
  - (c) powers to make provision about construction products;
  - (d) further provision about fire safety;
  - (e) provision about the regulation of architects;
  - (f) provision about housing complaints;
- **6. General (Sections 161 to 171)** – provisions covering liabilities of the body corporate, review of regulatory regime, financial considerations, etc.

Buildings in scope cover higher risk buildings and residential buildings/buildings with two or more dwellings including:

- New & existing residential properties – 18m/7 storeys high (includes the basement) whichever is reached first
- Hospitals, care homes, sheltered housing, hotels prisons, halls of residence, boarding schools are included
- Non-residential multi-occupied buildings where vulnerable people sleep e.g., hostels

Whereas many of the previous duties in relation to new build design and construction were through the Construction (Design and Management) Regulations 2015 (CDM), for buildings in scope, the new more stringent regime will place legal responsibilities on those who commission building work, participate in the design and construction process and those responsible for managing structural and fire safety when they are occupied.

This new dutyholder for building occupation will be known as the “Accountable Person” (AP) and will be the organisation or person who owns or has responsibility for the building. It may also be an organisation or person who is responsible for maintaining the common parts of a building, for example corridors or lobbies.

Where, for example during refurbishment projects, multiple dutyholders may be involved with a premises, the AP responsible for the structure and exterior of the building will be the Principal Accountable Person (PAP). When buildings have a single AP, that entity or person is also the PAP.

During the discussion leading up to the implementation of the new legislation one of the themes was that of the Building Safety Manager. This role however has been scrapped and absorbed into the Building Owner/Managing Agent role and may be delivered by the Accountable Person.

In supporting the new legislation, a number of new agencies have been created, including:

- A Building Safety Regulator (BSR) (this will be HSE) - responsible for the safety and standards of all buildings and improving industry competence;
- A Construction Products Regulator – who can remove from the market unsafe products; and
- A New Homes Ombudsman scheme - to provide dispute resolution and determine complaints (by buyers of new homes).
- The Act also sees the Appointed Person having a duty to take all reasonable steps to:
  - prevent a building safety risk happening (defined as ‘spread of fire and/or structural failure’);
  - reduce the seriousness of an incident if one happens
- In addition to this the AP or PAP must:
  - register existing buildings with the BSR (between April 2023 and October 2023)
  - register all new buildings before occupation
  - prepare a safety case report for the building and give to the BSR on request.
- As defined by GOV.UK - “The golden thread is both:
  - the information about a building that allows someone to understand a building and keep it safe, and
  - the information management to ensure the information is accurate, easily understandable, can be accessed by those who need it and is up to date.”
- It will see those responsible for the building will have a duty to providing more “easily accessible, reliable, up to date and accurate information on buildings”, through introducing and maintaining this golden thread of information. What needs to be covered will include:
  - the information about a building that allows someone to understand a building and keep it safe
  - the information management to ensure the information is accurate, easily understandable, can be accessed by those who need it and is up to date
- Design & Construction and refurbishment – demonstrating compliance with Building Regulations (required through the gateways or refurbishment process)
- When the building is completed –handed over to the person responsible for the completed building (the Accountable Person)



The BSR has a responsibility to oversee the ongoing safety of premises, through a gateway system of reviews. Three gateways have been established:

- **Gateway 1** – planning permission;
- **Gateway 2** – before construction begins;
- **Gateway 3** – before occupation begins.

This means the BSR will only allow a project/property to proceed to the next stage in the process/development if the dutyholder has provided the evidence that they are maintaining building safety.

Once occupied the AP will have an ongoing role to

- Implement a Resident Engagement Strategy (to include a complaints procedure which allows them to go to the HSE);
- Provide arrangements for the provision of building information to residents & contractors (e.g. FRA);
- Maintaining the Golden Thread of Building Information in digital format;
- Acceptance of works RAMS and monitoring contractors to check on hazards ; and
- Prepare/update the Building Safety Case

A Building Safety Case requires those accountable for high-rise and in-scope buildings to set out and justify their approach to maintaining safety on the premises, how they are managing fire spread, structural safety and limiting consequences. Building Safety Cases will be assessed by the Building Safety Regulator who will be assessing you:

- have identified your building's major fire and structural risks
- are managing and controlling them

Once satisfied with the report, the Building Safety Regulator will issue a Building Safety Certificate for that premises with a warning that no certificate means no occupation/re-occupation!

In Scotland and Northern Ireland separate legislation is already in place or being introduced, with some of the affects being:

- Amendments to the Architects Act 1997 (applicable in Northern Ireland)
- Amends the Prescription and Limitation (Scotland) Act 1973 (the "Prescription Act" (i.e. the time limits for raising actions) increasing the period of prescription;
- Amendments to the Health and Safety at Work etc Act 1974;
- Establishment of the new homes ombudsman scheme (applicable in Northern Ireland);
- Conferring powers on the UK Government to make regulations applicable to Scotland governing the supply and marketing of construction products.

Some further information can be found at:

[The Building Safety Act - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

[Building Safety Act 2022 - Explanatory Notes \(legislation.gov.uk\)](https://legislation.gov.uk)

[Building Safety Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

#### 4. Further considerations on the fire changes

These changes to the regulatory system for fire are only likely to be the start as potentially more building and sectors fall into scope or are subject to new legislation themselves. Some further considerations are:

- Are any of your buildings in scope for the current changes and if so how are you looking at managing the changes?
- What information do you currently have on your buildings and how does this relate to what you may need should they come into scope at some future time?
- Some commercial properties with cladding of a similar type to Grenfell are also beginning to possibly creep into the scope of BSA, what information do you need now to help your safety/fire management transition?
- Further legislation that could be introduced as part of the widening scope of the legislation may include:
  - The regular inspections of lifts and the reporting of results to the local Fire and Rescue Services;
  - Ensuring individual flat entrance doors, where the external walls of the building have unsafe cladding, comply with current standards;
  - Ensuring fire safety instructions are provided to residents in a form that they can reasonably be expected to understand;
  - Ensuring evacuation plans are reviewed and regularly updated and personal evacuation plans are in place for residents whose ability to evacuate may be compromised.

How might these affect your current activities?

- In a possible expansion to in scope buildings under the BSA, Fire & Rescue Service are still lobbying for a reduction to 11m in height for premises. Do you have a list of additional buildings that will need further action should such change occur?
- A revised Approved Document B is scheduled to come into force on the 1st December 2022, are you planning any changes to buildings in you portfolio after this time?
- Should a golden thread requirement be extended to other properties and sectors, what quality of information do you have currently and where are the gaps?
- If you have any questions or require some further advice on your current fire safety management please do give us a call.

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