



## White Paper

# New changes to the Regulatory Reform (Fire Safety) Order 2005

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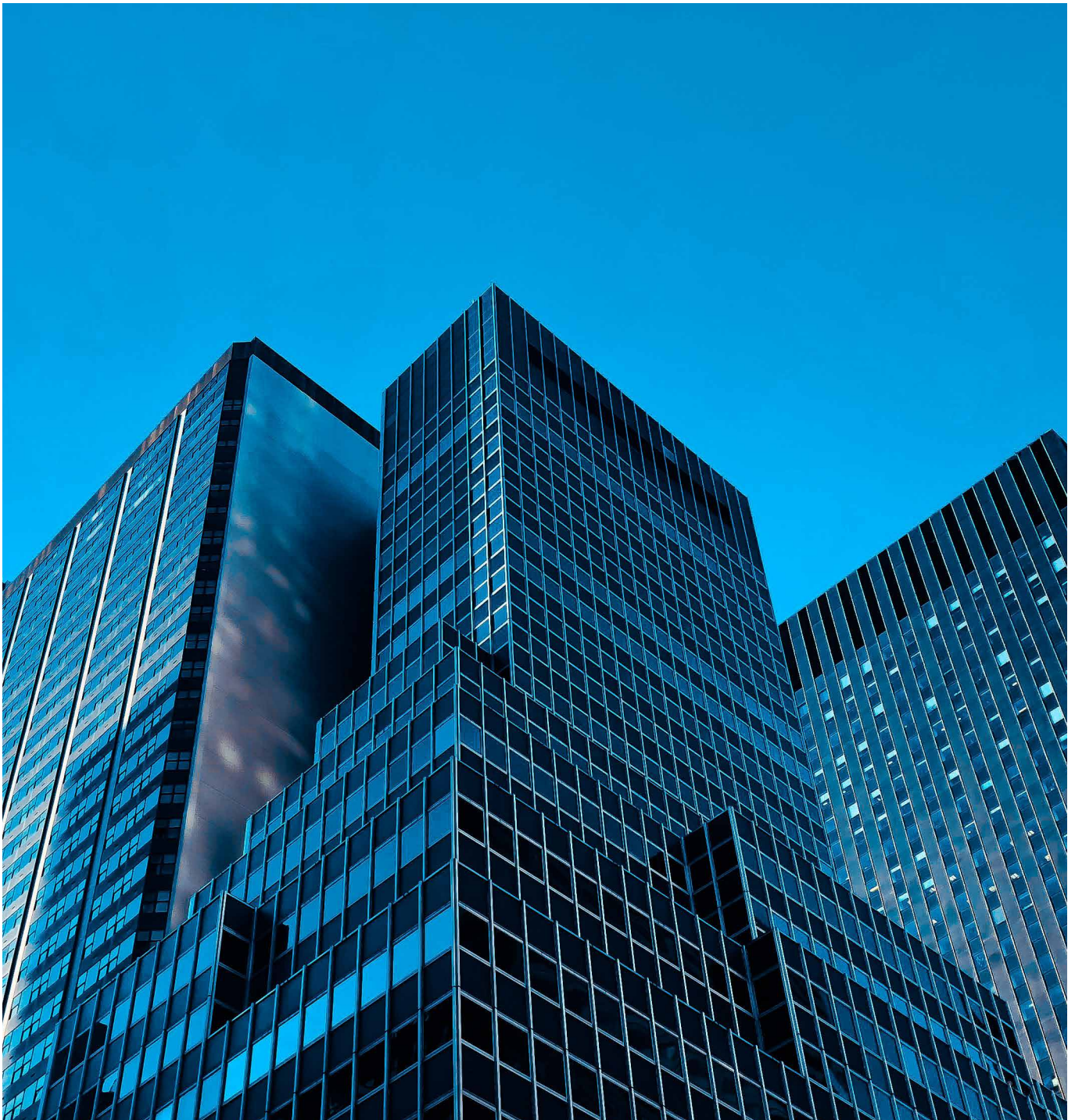


## New changes to the Regulatory Reform (Fire Safety) Order 2005

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As part of the myriad of changes in fire and building safety, resulting from the Grenfell tragedy in 2017, the Regulatory Reform (Fire Safety) Order (RR(FS)O) 2005 is no exception.

So, what are the changes and how do they affect those responsible for managing fire in non-domestic buildings. This month we take a look at some of the changes and what they could mean for the Government advice currently available.





## 1. What is the scope and when do the changes to the RR(FS)O come into force?

The requirements apply to all non-domestic premises e.g., where people work, visit or stay, including workplaces, as well as the non-domestic parts of multi-occupied residential buildings (e.g. communal corridors and stairways). The new requirements do not apply within individual domestic premises.

The changes come into force on 1st October 2023 in line with the Building Safety Act 2022 Section 156.



## 2. Who will now enforce the RR(FS)O?

The local Fire and Rescue Authorities remain the primary enforcing body for the RR(FS)O 2005, in the majority of non-domestic buildings.

The Housing Act 2004 lists enforcement by the local authority in non-domestic parts of multi-occupied residential buildings (e.g. communal corridors and stairways) as well.

In the case of non-occupied buildings on a construction site, the enforcing body will be the Health and Safety Executive.

For sites due to be occupied by the Armed Forces and the Crown Premises Fire Safety Inspectorate (buildings occupied or owned by the government), the enforcing body will be the Defence Fire Safety Regulator.



### 3. Section 156 of the Building Safety Act 2022 and the RR(FS)O

The introduction of Section 156 of the Building Safety Act 2022 coming into force on 1st October 2023, will amend the RR(FS)O 2005 in the following way:

- 'Responsible Persons' must record their completed fire risk assessment and in full (where previously only specific information was required to be recorded e.g. when the employer had 5 or more employees).
- 'Responsible Persons' must record the identity of the individual (their name) and/or, the name of the third party instructed to undertake/review any or all of the fire risk assessment.
- 'Responsible Persons' must record their fire safety arrangements (i.e. demonstrating effective planning, organisation, control, monitoring and review of the fire safety preventive and protective measures).
- 'Responsible Persons' must record, and keep up to date, their contact information, including a UK-based address, and share this with other 'Responsible Persons' and residents of multi-occupied residential premises where applicable.
- 'Responsible Persons' must take reasonably practicable steps to seek out other 'Responsible Persons' who share or have duties in respect of the same premises. They must also actively ascertain the existence of 'Accountable Persons' (the new legal entity made under the Building Safety Act 2022 in the case of higher-risk residential buildings) in relation to the premises. Essentially, they must then identify themselves to said persons.
- Departing 'Responsible Persons' must share all relevant fire safety information with incoming 'Responsible Persons'.
- 'Responsible Persons' of a building containing two or more sets of domestic premises must provide residents with relevant fire safety information in a format that's easily understood by the residents. This ties in the requirements stipulated in the Fire Safety (England) Regulations 2022.
- The level of fines for some offences are increased by removing the capped Level 3 fine (maximum of £1000).
- The status of statutory guidance issued under Article 50 of the Fire Safety Order is strengthened by removing the term 'risk-based', so it must be applied in full.

There's also a legislative requirement that, where the 'Responsible Person' appoints an individual to make or review the fire risk assessment, they must be competent. This legislative requirement will not come into force on the 1st October 2023, but will be brought into force at a later date. The Government will provide relevant guidance in that regard ahead of the commencement date.

In the meantime, for anyone looking to appoint a fire risk assessor, the Government's Best Practice recommendation is to ensure the appointee is competent to do so in terms of having sufficient training and experience or knowledge and other qualities. It remains the case that the 'Responsible Person' has a duty to make sure that a 'suitable and sufficient' fire risk assessment is completed at the premises.

## 4. Duties for all 'Responsible Persons'

The following duties apply to 'Responsible Persons' in respect of any building regulated by the Fire Safety Order.

### Recording fire risk assessments and other information

- Fire risk assessments must now be recorded in full (including all of the process findings), so too the fire safety arrangements for the premises in all circumstances.
- 'Responsible Persons' should make available as much information as possible about fire safety at their premises. This new requirement replaces the previous requirement to record only the 'significant findings' of the risk assessment. It also removes the previous limitations on the circumstances within which the 'Responsible Person' is required to record both the risk assessment and the fire safety arrangements at the premises, such as only being required to record this information if there were five or more employees or where the premises are subject to licensing or an alterations notice.
- If a 'Responsible Person' employs a fire risk assessor to assist them in completing a fire risk assessment, they must record their name and (where applicable) their organisation's name. This will ensure there's a clear record for enforcing authorities as to who completed the assessment and will enable the 'Responsible Person' to share this information with residents (again, where applicable) and any incoming 'Responsible Person'. The incumbent 'Responsible Person' is responsible for ensuring that the fire risk assessment is suitable and sufficient.

### Co-operation and co-ordination between 'Responsible Persons'

- It's important that 'Responsible Persons' work with other 'Responsible Persons' in the premises to help facilitate a cohesive approach to fire safety throughout the entire building. As such, they must take such steps as are reasonably practicable to identify whether there are any other 'Responsible Persons' at the premises who share or have duties in respect of it.  
For example, in multi-occupancy commercial buildings, other 'Responsible Persons' would not only include the other businesses, but also a landlord (and, possibly, a managing agent) who has overall responsibility for safety within the building.
- Once the 'Responsible Person' has identified that there are other 'Responsible Persons', all will need to inform each other of their names (or that of someone acting on their behalf) and a UK-based address where they are able to receive notices or other documentation.
- It will also be necessary to inform each other of the extent of individual responsibilities under the Fire Safety Order and make a record of this information. The 'Responsible Person' should know the extent to which they are responsible for the premises, which may be detailed in a contract, but if unsure, the Government advises 'Responsible Persons' to contact the building owner or manager in order to determine the extent of their control.
- 'Responsible Persons' should provide any information in writing. It's advised that they record this detail in such a way that it can be readily accessed if needed as evidence of information sharing. The 'Responsible Person' is required to keep a record of the information provided about the extent of their duties in relation to the premises.
- It's vital that the fire risk assessment – and any fire safety-related measures enacted as a result of this process – align with (and complement) the fire risk assessment(s) and fire safety measures for the rest of the building in order to provide a 'whole building' approach towards fire safety.

- Whenever possible, the 'Responsible Person' should let the other 'Responsible Persons' know when they have a new 'Responsible Person' taking over their part of the premises such that they can provide the necessary information detailed above to the incoming 'Responsible Person'.

### Co-operation with 'Accountable Persons'

- If you are a 'Responsible Person' in a higher-risk residential building, which is defined under the Building Safety Act as a structure of at least 18 metres in height or with at least seven storeys and containing at least two residential units, then you must take reasonable steps to identify the 'Accountable Persons' (this may include the 'Principle Accountable Person') within the premises.  
You will then need to co-operate with them to enable them to perform any duties they are required to perform under the Building Safety Act 2022, which would include, for example, sharing the fire risk assessment.
- The purpose of this requirement is to make sure that 'Responsible Persons' and 'Accountable Persons' take a 'whole building; approach to building and fire safety in the premises. This will include the golden thread of building information required to be provided in all new higher-risk residential buildings that includes the Safety Case Report, which will identify fire safety risks in existing structures.
- The 'Accountable Person' is likely to be the person (typically the landlord, but possibly a management company) with an obligation to repair any parts of the common parts of the building.

### Provision of information to new 'Responsible Persons'

- 'Responsible Persons' are required to share any relevant fire safety information with incoming 'Responsible Persons' in order to provide a continual record of fire safety information throughout a building's lifetime. This would include scenarios where the 'Responsible Person' ceases trading, is taken over by a new 'Responsible Person' or sells their business or freehold.
- Where you are the existing 'Responsible Person', you must provide any new 'Responsible Person' with any relevant fire safety information including:
  - the fire risk assessment and review records (including any fire safety information provided by other 'Responsible Persons').
  - the identity of any person who assisted with the fire risk assessment/review.
  - the name and UK address of any 'Responsible Person or any person acting on behalf of the 'Responsible Person' who will accept notices or other documentation.
  - the identity of the 'Accountable Person', where known (if in charge of a higher-risk residential building).
  - any information given under Regulation 38 of the Building Regulations 2010 (such as the information provided when a building is built or extended).
- If you do not have the contact details for the incoming 'Responsible Person', you could ask the building owner or manager. If they do not have them or cannot provide them, you should provide all of the required information to the building owner or manager such that they can forward this on to the incoming 'Responsible Person' when this has been identified. It's important to complete a written record of this task.
- Where disputes are identified with any of the above co-operation duties that will compromise fire safety, in the first instance the 'Responsible Person' should speak with the accountable people, landlord or freeholder. If this fails to resolve the problem, they should then contact the relevant enforcement authority.



## 5. Buildings with two or more sets of domestic premises

The following new duties also apply when the 'Responsible Person's' building contains two or more sets of domestic premises:

### Provision of information to residents

The amendments made to the RR(FS)O 2005 should make people feel safer in their homes and ensure that residents understand what the 'Responsible Person' is doing to comply with their specific responsibilities.

The Government has already mandated specific instructions that 'Responsible Persons' must provide to their residents under the Fire Safety (England) Regulations 2022, but these new requirements go further to enhance the provision of information and help residents feel informed and involved.

It's also important that the 'Responsible Person' records their name and a UK address in the fire risk assessment in order to make it easier for enforcement authorities to identify them and, where necessary, take enforcement action.

'Responsible Persons' must also provide residents with the following information:

- details of any risks to residents identified in the fire risk assessment;
- the fire safety measures provided for the safety of any or all occupants (such as the means of escape, measures to restrict the spread of fire and what individuals on the premises should do in the event of a fire);
- the name and UK address of the 'Responsible Person';
- the identity of any person appointed to assist with making or reviewing the fire risk assessment;
- the identity of any competent person nominated by the 'Responsible Person' to implement firefighting measures; and
- any risks to relevant persons throughout the building that have been identified by other 'Responsible Persons' at the premises.

If different to their own contact details as the 'Responsible Person', the 'Responsible Person' should consider providing contact details for residents to be able to inform the latter of any concerns or queries they have about fire safety matters or the information provided to them.

The Government may update the list of information to be provided to residents to reflect future developments in fire safety, and may specify the frequency and format in which the information should be provided.



## The Fire Safety (England) Regulations 2022:

- mandate fire safety instructions that must be shared with residents of multi-occupied domestic premises where resident evacuation would be through common parts, such as the evacuation strategy, how to report a fire and what they must do when a fire occurs.
- require 'Responsible Persons' to provide information on fire doors, including that they should be kept shut when not in use, that residents should not tamper with self-closing devices and that residents should report any faults with such doors immediately.
- stipulate that information on fire safety instructions should be displayed in a conspicuous part of the building, with a copy of such information provided to new residents when they move in and existing residents on an annual basis.

If you are the 'Responsible Person' for a building located in England, you should provide both the instructions required under the Fire Safety (England) Regulations 2022 and the information required as a result of the changes made to the Fire Safety Order. It may be helpful to provide both sets of information as a single package so that all necessary information is in one place and in a single format for residents.





## 6. Other changes to fire safety legislation

Article 32 of the Fire Safety Order sets out a number of offences that may be committed by a 'Responsible Person' in relation to their duties under the Fire Safety Order.

It is worth noting that a 'breach' of the Regulatory Reform (Fire Safety) Order 2005 results from not complying with the requirements. A breach of the Order is only an 'offence' when it places someone at risk of serious injury or death. For example, not recording the name of the fire risk assessor, and providing the information to residents, is a breach of the Order. However it doesn't necessarily place people at risk of death or serious injury. There are exceptions however:

- An Enforcement Notice can be issued for a breach. Failure to comply with that notice, would then be an offence. There is no need to prove a 'risk of death or serious injury' in this case.
- A breach of Article 27 (Fire Officer requests etc.) is an offence. Again, there is no need to prove a 'risk of death or serious injury'.

Section 156 of the Building Safety Act 2022 has increased the level of fine for offences in relation to the intentionally deceptive impersonation of a fire inspector, failure to comply (without reasonable excuse) with specific requirements imposed by a fire inspector (such as by not providing a copy of the fire risk assessment when requested) and failure to comply with requirements relating to the installation of luminous tube signs. These fines have increased from Level 3 (£1,000) to Level 5 (unlimited).

The new level of fines will only take effect from the date the new legislation comes into force (i.e. if an offence is committed before 1st October 2023 where these fines are applicable, then the previous level of fines would be used). This aligns the level of fine possible for these offences with all other offences and provides an increased deterrent against non-compliance.

Article 50 of the Fire Safety Order requires the Secretary of State to ensure that such guidance as they consider appropriate is made available to assist 'Responsible Persons' in discharging their duties.

Section 156 of the Building Safety Act 2022 strengthens the status of all Article 50 guidance by providing that, in court proceedings for alleged breaches of the RR(FS)O 2005, compliance with or deviation from guidance issued under Article 50 may be relied upon as tending to establish whether or not there was a breach of the RR(FS)O 2005. This means that all provided guidance must be followed to prevent a breach of the RR(FS)O 2005.

The above information can be found on the Government website: [Fire safety responsibilities under Section 156 of the Building Safety Act 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/fire-safety-responsibilities-under-section-156-of-the-building-safety-act-2022)

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