

31 July 2019

Subject

The Regulatory Reform (Fire Safety) Order 2005: call for evidence

Organisation

Home Office

Introduction

London Fire Brigade (LFB) is London's fire and rescue service - one of the largest firefighting and rescue organisations in the world and we are here to make London a safer city. Decisions are made either by the London Fire Commissioner (the statutory fire and rescue authority for Greater London), the Mayor of London or the Deputy Mayor for Fire and Resilience. A Fire, Resilience and Emergency Planning Committee of the London Assembly holds the Commissioner, Mayor and Deputy Mayor to account.

Executive summary

London Fire Brigade welcomes this call for evidence. If buildings are not designed, built and maintained with fire safety as a priority then people will be put at risk. Buildings built this year will potentially be homes for the next 50 years or more – the people who live in them need to be safe and feel safe. Firefighting operations are underpinned by key assumptions about building design and how they will behave in a fire. When dangerous and often hidden conditions exist due to failures of design, build and maintenance the effectiveness of the operational response will be seriously undermined and the safety of members of the public and firefighters could be severely compromised. **Fire and rescue services cannot be regarded as a safety net for failures in the built environment and for when those with responsibilities for building safety do not take their responsibilities seriously.**

More detail is needed before we can be confident that these proposals will deliver the fundamental change that will fix a 'broken system' as Dame Judith described it. The fundamental changes need to include cultural change and the lack of that is an ongoing issue.

The responses we have provided to the consultation questions are dependent upon the assumptions and expectations we have on the following issues:

- that the duties of an overarching regulator with powers that extend across all buildings will be taken forward through legislation;

- that the government recognises the need for greater competency and skills in the industry and will take the necessary steps to address it;
- that there will be a full review of Approved Document B that will include extending the requirement for automatic fire suppression systems (AFSS) into more buildings than currently exist and ensure appropriate access and facilities for firefighters;
- that the new framework will be sufficiently flexible to allow for emerging themes to be addressed and subject to regular review.
- that there will be clearly delineated roles and responsibilities to ensure accountability

As we have emphasised throughout this process, it is essential that reform to the system deals with the built environment in the round and does not just focus on high-rise residential premises. The new system needs to be designed to prevent tragedies rather than just reacting to them. Consequently, we have called not just for a strong regulator but one with powers that extend to all buildings and who will be proactive when addressing risk.

Our assumption from this call for evidence and the MHCLG consultation on Building a Safer Future is that there will be a new piece of legislation, introduced by MHCLG, to create the Building Safety Regulator (the regulator) which would set out its duties both generally for all buildings, and specifically for buildings prescribed as 'in scope' for parts or all of the building's life cycle from design stage onwards. The proposals contained within this consultation appear to suggest a 'top down' approach with specific requirements for the buildings in scope, but do little to address issues in the wider built environment. We recommend a 'bottom up' approach whereby the expectations of safety are well defined for all buildings with a further uplift for those the building safety regulator determines are in scope. The framework needs to have regular review periods and should allow the regulator to adapt as required.

The consultation document states that it will be the responsibility of the regulator to determine what is in scope – it is fundamental to this new approach that this power stays with the regulator, rather than government, though the Secretary of State should be able to direct the regulator to act, where appropriate. Further, the scope should include the 'higher risk buildings' from day one rather than rely on the regulator to designate them later. This must include premises where vulnerable people live or are staying such as hospitals, care homes, and sheltered housing which either have a 'stay put' or a 'progressive evacuation' strategy in place because of difficulties in evacuating vulnerable residents. In these cases it is imperative that measures are put in place and maintained to keep them safe while firefighters can attend and tackle the fire.

We further assume that this new legislation will provide the mechanism for the 'golden thread' so that there is clear passage of information and responsibilities during the whole life of a building and that it will provide a mechanism for adding conditions to the golden thread when required (e.g. a safety case). We have emphasised that the golden thread should consider from an early design stage that this information will inform the fire risk assessment. The in-use fire risk assessment should never be 'from scratch' but should be a result of a continual development process, culminating in an assessment based on the design information that has been passed along the design supply chain. This ensures that the level of detail relating to the systems and other control measures within the building is high from the outset and that the end user and their risk assessors are not reliant on 'I have a compliance certificate from building control' as the evidence of what is in the building.

As above, it is essential that the new legislation allows any buildings to be brought into scope by the regulator. Existing or revised regimes such as building regulations, health and safety and general fire safety would, we assume, continue to apply and be enforced in the normal way, with oversight from the regulator who would hold responsibility for matters such as arbitration and determination at building regulation and occupation stages. A further assumption is that buildings in scope would follow the relevant gateway paths including ongoing compliance with any additional conditions or requirements under the regulatory oversight of the regulator. Proposals arising from the Home Office call for evidence would form one of the ongoing general regimes in an upgraded format from the existing RRO as would the amended Housing Health and Safety Rating System under the Housing Act 2004. Demarcation between these two regimes needs to be improved by the revisions.

Competency is key to ensuring public safety in the built environment and we have long-standing concerns about competency and skills across the industry. As stated in our original call for evidence on the Independent Review (October 2017), we have observed a decline in competency and skills in the sector, particularly in the last five years. This competency issue relates to individuals and organisations taking part in initial design stages of premises, those assessing and approving designs (including fire authorities), those undertaking building works and making changes to the original design and those carrying out fire risk assessments once the building is occupied. There are countless points in a building's life where decisions are made that can have potentially dangerous consequences. Everything from a poor choice of building materials through to badly designed refurbishments could undermine a building's safety and put lives at risk. Ensuring that buildings are safe is dependent upon having more people in the industry who are qualified and experienced to give these decisions proper oversight.

We have previously called for an urgent, full, technical review of Approved Document B and welcomed the commitment within the Government's implementation plan published in December 2018 to a full technical review and the subsequent call for evidence to which we responded in March 2019. As we stated in that call for evidence, the primary purpose of the guidance is to support the functional requirements of the Building Regulations but, due to the historic lack of regular review, it often lags behind common practice and new and developing construction methods and techniques. We have sought an ongoing commitment towards a regular review period of the guidance, and recommend that there should be a period of no more than five years between reviews. This aligns with the recommendation made in Dame Judith's final report.

One specific area where we have consistently called for reform is the use of AFSS, such as sprinklers and water mist. There is clear evidence that AFSS plays a highly significant role in reducing the impact of fire as part of an appropriate package of fire safety measures. We believe that action could be taken in this area before the full technical review of ADB takes place to make AFSS mandatory in all buildings housing vulnerable people, such as care homes and sheltered accommodation, and in schools. The mandatory requirement for AFSS in blocks of flats is currently set at 30m and we believe this is woefully insufficient. The requirement for AFSS in new build blocks of flats and retrofitting to existing buildings should also be extended significantly further than it currently is. Despite all the evidence and widespread support for sprinklers, our evidence shows that the voluntary approach for their inclusion in buildings is not working, with developers consistently ignoring expert advice on when they should be included. That is why we have made public calls for the Government to step in.

We have also urged that a full review of firefighting access and facilities takes place to ensure that firefighters are offered the highest level of protection when entering buildings and are afforded the best opportunity to preserve life and prevent significant damage to buildings. This review should also include the vehicular access arrangements, and the provision of water for firefighting purposes, including fire hydrants.

The new framework needs to be flexible to allow for emerging themes and be subject to regular review. In this response we reiterate what we have said in previous consultation responses - that while 18m aligns with current guidance (ADB and British Standards) in respect of areas such as firefighting shafts, it is an historical height which does not reflect modern firefighting equipment and practices. A flexible system would allow the current threshold to be reviewed and a threshold which is more reflective of modern firefighting equipment, such as 11m, to be considered.

In terms of the building regulations approval process there have been times LFB has been advised that clients have 'shopped around' for a building control body prepared to agree a design in order to get approval. This clearly presents a risk to public safety. We believe the new regime should address this by removing the ability for an applicant to choose their own approval body.

We wish to draw your attention to the following points we have made in our response.

- The Fire Safety Order (FSO) has worked well for the majority of premises. However it is recognised that it could not go as far as legislation created through an Act of Parliament due to the constraints of the enabling Act. Practical use of the FSO has identified a number of areas where it could usefully be amended or uplifted to further provide for public safety.
- Legislation and supporting guidance should be regularly reviewed.
- Any Fire Safety Order replacement should provide a sound core regime for all premises types with the ability to uplift through regulations for any specific premises uses or classes where additional requirements may be identified. It would be wrong to work from a 'top down' basis and provide lower levels of core fire safety requirement for some premises when the differences between them and others in designated classes may be minimal.
- Care must be taken to avoid creating confusing separate regime that do not feed into each other and for which existing work under one regime becomes null and void if the regime is flexed to make further provision for a premises use or class.
- The ability to identify and take enforcement action against those responsible for premises to which the regime applies is crucial to effective enforcement of the regime. Adequate powers must be provided to fire and rescue services.
- There should be a recognised demarcation between the housing health and safety rating system (HHSRS) and Fire Safety Order regimes but both enforcing bodies should be able to take immediate action in case of serious and imminent risk.
- Further consideration must be given to ensuring safety in the developing sheltered housing/ supported living sector given the vulnerabilities of service users.

Responses to individual consultation questions

Q6. Which of the next section(s) do you wish to use to respond?

X Section 2: Fire Safety Order Scope and Objectives

X Section 3: Issues specific to multi-occupied residential buildings

X Section 4: General application – workplaces and other non-domestic premises

X Section 5: Higher risk workplace buildings and fire safety.

Section 2: Fire Safety Order - Scope and Objectives

Q7. To what extent do you agree or disagree with the scope of the Fire Safety Order?

X Agree strongly

Please explain.

That there should be a single overarching risk based fire safety regime in all places (with very limited exception) is clearly in the interest of public safety and the understanding of users and enforcers .

However, in the absence of significant central guidance or significant case law the true extent of the scope of the FSO for areas such as the common parts of multi-occupied residential buildings (i.e. which parts are used in common and/or are workplaces) remains unclear and untested.

Lack of clarity around areas such as the envelope of residential buildings, party walls in residential buildings, holiday lets, serviced apartments, sheltered housing (notably at the Extra Care level), Airbnb type accommodation, moored vessels, squatters (i.e. what 'lawfully present' is intended to mean) detracts from understanding and application of the FSO requirements by responsible persons, fire risk assessor and enforcing authorities. On some occasions this can result in unnecessary disputes between them.

In your experience, does the Fire Safety Order meet the following objectives:

Q8. Enable a risk-based approach to fire safety, adaptable to any non-domestic premises?

X Yes

Please explain.

The FSO facilitates a risk-based approach according to the nature and use of individual premises. Difficulties principally arise from attempted application of prescriptive solutions on a 'that's what the guide/standard says' basis. Separately, issues can arise due to cherry picking from multiple guidance documents or standards to justify the cheapest solution rather than the safe solution each of the guides/standards envisages when used as intended. This particularly happens at design and build stages of a project.

Q9. Provide a proportionate legislative approach to ensuring fire safety for business and enforcing authorities?

X Yes

Please explain.

We consider the legislative approach to be proportionate by allowing general fire safety provision to be tailored to individual premises and able to 'flex' as circumstances change within those premises or in the way in which they are managed. The discretionary nature of formal enforcement by enforcing authorities and application (voluntarily) of an Enforcement Management Model (EMM) allows the level of enforcement action to be used to be applied proportionately to the circumstances of the case. Additional mechanisms such as 'spot fines' as an alternative to prosecution for significant contraventions would assist in the proportionality and efficiency of enforcement of the regime.

Q10. Make those in control of regulated premises take responsibility for ongoing fire safety and protection measures – as Responsible Persons?

X No

Please explain.

Although the majority answer to this question would be 'yes', there are exceptions. The FSO itself places responsibilities on all those who, to any extent, have control over premises. However, this does not, of itself, make these persons take and exercise that control. As a 'self-compliance' based regime there will always be those who choose not to comply, and those who inadvertently fail to do so. This means that compliance with the regime is only as good as the enforcement of it by enforcing authorities utilising the resources available to them.

A notable example of difficulties in this area is overseas investors in the UK property market. Such individuals and businesses are not required to provide UK addresses where official documents can be served. Such persons can therefore often seek to distance themselves from their investment property when it comes to ensuring safety or compliance with other legislative requirements. That may include appointing a person under article 18 or having a contract covered by article 5(3) but not providing that appointee with sufficient power, such as enforcement of terms of leases, to actually exercise any more than cursory control.

Others will utilise mechanisms such as application of the corporate veil in company group structures; or dissolution of companies and transferal of assets to new companies to avoid responsibility or enforcement action.

In essence, there are those who will always seek loopholes and utilise them to minimise expense and maximise profit.

Q11. Support compliance and enforcement activity through guiding principles and guidance?

X No

Please explain.

Although the legislation itself provides, in the main, a straightforward regime and requirements, guidance on application and interpretation for enforcing bodies is extremely limited. This gives rise to differing views and interpretations in the more difficult cases. Interpretations or guidance provided by third parties, while valuable, cannot provide the same degree of assistance as that provided by the legislature. Guidance for users seeking to comply with the law has not kept pace with developments in industry sectors and is of limited application for larger premises.

Section 3: Issues Specific to Multi-Occupied Residential Buildings

Q12. What are your views on how we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?

In our view, it is likely that application of one or both regimes may need to vary according to the size, type and nature of the multi-occupied residential premises concerned.

To provide for a holistic approach there is a need to tie together the management of fire safety risks and associated protective measures. That must encompass a crossover of enforcement to ensure that the different factors can be considered. For example process risks arising during maintenance or remedial works temporarily affecting general fire precautions.

Fire and rescue service involvement in the fire safety of premises serves two functions: proactive promotion and enforcement through risk-based inspection of life safety requirements for the occupants (and those in the immediate vicinity); and ensuring access (and safety) for firefighters when seeking to exercise their statutory functions for firefighting, rescue and overall protection of life and property. The latter of these comes to the fore in relation to premises designed, regardless of age, with the intent that firefighting activity and rescue will primarily take place from within the building. The two issues go hand in glove and it is preferable that they are dealt with by one enforcing authority.

For housing authorities fire tends to be only one element of a wider health and safety review. For smaller multi-occupied domestic premises the extent of parts used in common that can reasonably be taken to be workplaces is much diminished, if in real terms it exists at all. Such premises are more predominantly akin to standard domestic houses, albeit on occasion larger ones e.g. houses in multiple occupation and houses converted to flats or purpose built of blocks of comparable size. Measures to assist the fire and rescue service will not be usually be expected or present by virtue of building regulations past or current. Such premises also lend themselves to enforcement by a single authority but could be more readily dealt with under standard conditions such as HMO licensing.

Providing firm demarcations (with the ability to flex those) with the primary demarcation being housing authorities having primacy within dwellings (the extent of which should be defined to include the common parts of HMO and street properties converted to flats). Fire and Rescue Authority (FRA) enforcement should take primacy in larger multi-occupied residential premises and include common parts and structural element including compartmentation between dwellings and external facades/envelopes.

Separate and specific consideration should be given to specific uses of residential property such as supported and sheltered housing schemes to ensure vulnerability is fully considered and accounted for.

All authorities should recognise the changing social care landscape and ageing demographic. This means that there are nearly a million vulnerable residents currently living in various forms of sheltered, extra care and supported housing and this will increase as the years progress.

By definition, those living in this type of housing represent those most vulnerable to injury or death if a fire occurs, whether by a propensity to contribute to the likelihood of a fire, reduced capacity to respond or mobility constraints. These factors already lead to a disproportionately high number of fires for these residents - impacting severely on the victim, their families, carers and neighbours, and the community around them.

Q13. If both regimes are to continue to apply, how can they be improved to complement each other?

The co-working of the regimes could be assisted by legal clarification (building on case law) of what is considered to be a workplace, mutually compatible definitions of parts used in common/common parts/serving more than one unit/retained by a landlord; and clarification of primacy in specific circumstances. The definition used for the purposes of HHSRS would seem appropriate.

In addition the cooperative duties to consult between authorities prior to taking action could be extended to agree which authority will act – with each being able to utilise the evidence gathered by other authorities for the purpose of any necessary enforcement action.

Simplification of the process under which HHSRS enforcement action may be taken would be an improvement. Notably, removal of the requirement for written authorisation justifying which course of action has been taken and clarification or removal of the 'compensation' elements of emergency action procedures. These are often seen as a bar to local authorities acting in cases of higher risk should be considered.

Were the FSO to be dis-applied in all cases this would be a matter of concern as it would remove control over measures used by and for the safety of firefighters and their association with the protection of residents in situ or seeking to evacuate. The proactive duty on the person responsible for the premises to ensure safety would also reduce or cease unless an alternative were put in its place. There may also be reductions in safety of workers as they are not necessarily covered by HHSRS. Possible infractions under EU law may arise if EU requirements are not maintained (subject to Brexit and any agreed plan for continuance of some existing EU based law).

Q14. How should we ensure the fire safety of a whole building which is in mixed use, where there are two or more persons responsible for respective parts of the building under different legislation?

Fundamentally, one regime should apply as a baseline for fire safety across all commercial uses and parts used in common (which should be commonly defined across the regimes). Where parts of the premises fall within higher risk categories then (if necessary) additional requirements should be applied up to and including provision of a safety case (encompassing all risks that may impinge or impact on fire or structural safety, e.g. Process risk, hot works, gas safety, electrical safety).

There is a need to nominate or legally define the person who is to coordinate in a manner similar to article 12 of the FSO (and the Dangerous Substances and Explosive Atmosphere Regulations) but this cannot be reliant on the presence of dangerous substances. Freehold owners or majority users might be considered appropriate at sub-safety case levels and it may be necessary to provide a civil remedy or power to allow the legally nominated/appointed person to require others to cooperate without enforcing authority intervention.

Section 4: General Application - Workplaces and Other Non-Domestic Premises

Responses in this section relate to workplaces and parts used in common in residential premises. It is necessary to note here that (a) workplaces as defined (in the call for evidence and the fire safety order) do not include the self employed or in some cases the third sector; (b) by virtue of the Health and Safety at Work etc Act 1974 case known as 'Westminster Council v Select Management' many common parts such as stairs, corridors, plant rooms etc. are 'workplaces' for the purpose of the FSO and health and safety legislation. It is primarily for this reason that the FSO applies to the common parts of blocks of flats and other residential premises that contain more than one dwelling (equality of treatment for places with permanent staff and those without also being a factor).

Q15. Have you experienced any issue establishing who the Responsible Person(s) is(are) in the premises you occupy or regulate?

X Yes

Please explain.

For multi-occupied residential blocks issues arise due to the different varieties of persons who may hold responsibilities and the nature of the leases and contracts between them. Identification of the responsible person becomes tied up in non-fire safety related legislation such as the Commonhold and Leasehold Reform Act 2002, the terms and manner under which a premises is operated (e.g. by a residents management company, a company appointed by the freeholder within a group of companies; or another route) can be complex and difficult to determine. Identification of who has responsibility for what can be problematic and can be exacerbated by overseas ownership or the registration of companies offshore which no UK contact details. The requirement for companies to display operator details at premises and to provide a UK address (for companies) does not, according to conversations with Companies House, apply to those 'merely' operating residential blocks as a landlord.

For all types of premises, the operation of premises through 'shell companies' often utilising offshore registration makes it difficult to identify which company is the actual employer of staff as the primary responsible person. The same applies with group companies. Businesses may operate different companies for different facets of their business or different companies for different locations. Usually one company will be the employer of all group staff but there can be reluctance to formally identify which. Use of the term 'we' in correspondence sent on group headed paperwork or email is not uncommon.

Q16. Are the duties of the Responsible Person sufficient to ensure adequate fire safety measures are in place in the premises at all times?

X No

Please explain.

The duty to cooperate is insufficient as it does not provide for any one person or body to 'lead' other than where dangerous substances are present.

The duty to protect the means of escape through provision of fire resisting flat front doors and other fire resisting compartmentation remains the subject of debate and argument and should be clarified to ensure responsible persons accept the duty and have adequate legal means at their disposal to ensure it is complied with by leaseholders.

The apparent absence of a duty in respect of fire resisting construction between flats and for the surface spread of flame across external faces of residential premises should be addressed as a question of scope rather than the natures of the duties imposed - whether they apply rather than if they are sufficient. However, powers for responsible persons and their fire risk assessors to enter to periodically check may be required or made explicit rather than rely on variable terms of lease.

The duty to manage (article 11) can and has been interpreted to only apply to preventative and protective measures (i.e. general fire precautions identified via fire risk assessment) consequently requiring management of general fire precautions where no fire risk assessment has been carried out or does not identify the relevant fire precaution has been called into question. Similar considerations apply to article 10.

Article 38 requirements should be reviewed as at present it is very difficult, and in some instances impossible, to rectify building regulations failures relating to measure for use by firefighters, for example rising mains not being installed or not covering all floors. Although we understand at the time of the making of the FSO, Ministers said it had been drafted to allow matters missed under building regulations to be rectified, coverage and scope mean that is not always possible. Specific examples can include private water mains, which may feed wet rising mains, and hydrants where they are not identified through fire risk assessment or it is unclear through passage of time on what basis they were provided. The mains are frequently found to be failing and it is exceedingly difficult to identify and determine who is responsible for taking action to remedy the matter to provide firefighting water.

Q17. Is the expectation that Responsible Persons self-evaluate whether they are able to meet their duties under the Fire Safety Order, or require assistance, the right approach?

X Yes

At present this a specific requirement of European law. Whether it remains appropriate in the future will be dependant on the United Kingdom position in relation to Europe.

The duty goes wider than suggested with the requirement being to appoint competent persons from within the workforce and only to go to an external third party where such expertise is not available or cannot be provided in-house.

For smaller premises the approach appears reasonable however in defined complex or higher risk premises setting specific competence or qualification levels for specific roles, which enforcing authorities may do as part of formal enforcement action, would seem reasonable if it can be legally achieved.

Q18. Have you experienced or identified any issue regarding cooperation between Responsible Persons?

X Yes

Please explain.

Lack of cooperation between occupiers in multi-occupied commercial premises and mixed use premises is commonplace. Principally this arises due to a lack of any one person or body being specifically charged with the duty to coordinate and ensure cooperation. This should, in our view, be the landlord or head-lessee.

There have been a number of recent cases in extra care sheltered housing blocks of flats in which the fire safety responsibilities of the responsible person and other duty holders have not been fully clarified, documented and managed. This has left some gaps in the provision and management of fire safety arrangements.

For example, in some cases the individual flats in extra care housing blocks are rented or leased to vulnerable residents, the whole building itself is owned and managed by one company, a second company provides care to a number of residents and other companies provide visiting carers to other residents on an ad hoc basis. During the day the fire safety and emergency plan is managed by the staff of the building owner/manager, but at night it is left to a few staff of the company providing care to some of the residents. These care staff had no contractual responsibility to respond to the fire alarm system or take any actions to investigate/evacuate residents at risk within their flats.

Q19. Have you experienced or identified any issue regarding coordination of fire safety measures between Responsible Persons?

X Yes

Please explain.

Please see the response to Q18.

In your experience, are the general fire risk assessment requirements listed below sufficient:

Q20. To carry out a suitable and sufficient fire risk assessment?

X No

Please explain.

Although the duty appears adequate it could be improved by clarification of the extent of coverage i.e. risk arising external to the premises or part of premises and level of detail required.

For sheltered housing and similar premises there is a need for greater consideration to be given within risk assessment to vulnerability of premises users and their ability to reduce the risk of fire or to respond to a fire by implementing the expected or designed fire safety strategy /evacuation plan.

Q21. To review the fire risk assessment regularly, or when needed?

X No

Please explain.

There is a lack of clarity around what 'regularly' does or was intended to mean. The regularity may need to be dependent on risk levels and natural deterioration of the premises.

Q22. To record the fire risk assessment?

X No

Please explain.

The requirement being to record the significant findings, this does mean that the level and quality of information available to responsible persons and enforcing authorities can be highly variable. In part this is due to people ignoring or disregarding the requirement to record the general fire precautions with which the premises are equipped. Usually that seems to arise on the basis of building regulation approval having been granted at some point in the past and the assumption being made that everything is therefore as it should be. Regrettably that is not always the case. Guidance that advises words to the effect that 'not everything needs to be recorded', also does not assist in ensuring that a solid baseline assessment has been conducted and adequate review is undertaken.

Q23. Are you aware of government guidance published online to support compliance with and enforcement of the Fire Safety Order?

X Yes

Q24. Have you used any government guidance listed at Annex C?

X Yes – please specify number(s) / title(s) from the list.

We have used all the guidance listed in Annex C.

Q25. Do you have any suggestion on how to improve the government guidance you use?

X Yes

It should be reviewed and brought up to date. Government endorsed guidance for more complex premises that is specific to the fire safety regime and relevant enforcing body should be provided.

Greater information and guidance on identifying and addressing issues relating to vulnerabilities of individuals and groups should also be provided.

Q26. Have you identified any gaps in the available government guidance that could be addressed to better support compliance and enforcement activity?

X Yes

Improved guidance for the specialised housing sector that falls between general needs housing and residential care.

There is a need to improve coverage in all guides but particularly those relating to sleeping accommodation, residential care and similar premises of the need to adequately consider the vulnerabilities and health and safety capabilities of residents and/or users of the premises or service. Existing guidance tends to focus on physical fire precautions based on 'norms'. Greater emphasis on considering the individuals, their vulnerabilities and health and safety capabilities to determine adequate general fire precautions, including risk reduction measures, should be provided.

Q27. Do you have practical information to share on fire risk assessment considerations and fire safety measures specific to relevant persons who are "people especially at risk" due to age, disability etc?

X Yes

In our experience the fire risk assessors and responsible persons only consider the 'generic occupation group' in the premises rather than any detail about their specific needs. For

example, in care homes, sheltered housing and supported living they may identify that the occupiers are elderly and/or vulnerable but make no reference to the need for person centred fire risk assessments or personal emergency evacuation plans. These will be critical in most cases to implementing additional control measures to reduce risks, or any specific consideration of the emergency plan and staffing levels to evacuate such individuals particularly at risk.

This is because the national guidance and PAS 79 focuses primarily on the premises physical protection measures rather than both the people and the property. This is driven partly by wording in the PAS 79 guidance, LACORS and various CLG Guides that do not make clear the importance of these factors.

LFB has significant evidence from enforcement action that this is a widespread problem that needs to be resolved through changes to the FSO, clearer guidance and formal requirements.

Q28. Are the employee fire safety training requirements sufficient?

X No

Please explain.

Clarity around temporary and agency workers is required. It can be the case that these workers are not included in staff training arrangements as they are not regarded as part of the employers direct responsibility.

Q29. Are the general fire safety duties of employees at work sufficient?

X No

Please explain.

The position for temporary and agency workers is unclear.

It would also be helpful if the definition of general fire precautions encompassed defect reporting mechanisms so that article 11 could be more readily applied to employers and others such as landlords to ensure they have effective policies and mechanisms in place.

At present it is difficult to enforce to ensure that adequate reporting mechanism to assist in risk identification and risk reduction are in place and operating successfully.

Q30. Are the competent person requirements sufficient?

X No

Please explain.

The health and safety capabilities requirement in regulations should be brought forward to the main regime. Ensuring that the competent persons has the requisite time and tools, as per health and safety requirements, should be included.

For some tasks/roles it is to be assumed that other legislative requirements will apply, for example electrical qualification for works covered by Part P to the building regulations, whether this needs to be drawn out to replicate or highlight those requirements should be considered.

Consideration should be given to a specific offence for a person to misrepresent themselves as competent to fulfil safety related tasks over and above the offence of act or default which can be complex due to chain of causation issues. This should include third party fire and health and safety risk assessors.

Q31. Do you have an example when you evaluated whether a person was competent to carry out duties under the Fire Safety Order?

Yes

Please describe your example.

As an enforcing authority competence tends to be evaluated 'after the event' and to be assessed by the results. Finding poor fire stopping or inappropriately designed or installed general fire precautions tend to call into question the competence of the persons undertaking the work and comment in enforcement action will be made accordingly.

Separately, in relation to risk assessment, this is again judged by result and that can and will continue to result on prosecution, though at present not general enforcement action.

Q32. Are the general fire safety information sharing and management requirements sufficient?

No

Please explain.

Existing requirements are limited to employees and employers of third party employees. A specific provision should be introduced to allow residents access to information. We have often had cases where sight of fire risk assessments has been refused on the basis of there being no specific requirement.

Q33. Do you have an example of how fire safety information has been selected and communicated to employees and other relevant persons?

No

Please describe your example.

Our examples tend to relate to cases where the relevant information, be that fire safety risk information or details of existing general fire precautions, or lack thereof, has not been communicated to employees, workers from third party employers or fire risk assessors.

Q34. Do you have an example of how fire safety information has been transferred between successive Responsible Persons?

X No

Please describe your example.

In our experience, other than some cases where building regulation Regulation 16B/38 packs have been passed on, it is rare for fire safety information to be carried forward from responsible person to responsible person. Exceptions occur where business premises, including care homes, have been bought out and staff transferred to a new employer under the TUPE regulations, in one recent cases existing arrangement form the old business owner simply continued so the information held was technically passed across. However, the information including the fire risk assessments had not been reviewed.

Q35. Does the Fire Safety Order provide an effective enforcement framework for different enforcing authorities to operate in relation to the premises that you occupy or regulate?

X Yes, but with the caveats set out below.

Please explain.

In your response, you may wish to consider : i) How do enforcing authorities collaborate to ensure effective, coordinated enforcement activity? ii) Are there any differences in the enforcement approach taken by enforcing authorities in relation to premises that you occupy or regulate? iii) Does the Fire Safety Order provide a sufficient range of powers and tools to enable proportionate and effective enforcement action? iv) Is the current range of offences and sanctions sufficient to deter from and take effective action against any breaches of the Fire Safety Order? v) Are there any non-legislative barriers to taking effective enforcement action under the Fire Safety Order?

Although there are mutual requirements for enforcing authorities and others to consult prior to taking enforcement action, the extent to which these are applied in practice, or indeed could be given resource demands, is comparatively limited and usually takes place on a more ad-hoc local discussion basis.

We often find other authorities pressing for the FRA to take action under the FSO rather than utilising their own powers which would be more appropriate. In some instances it is restrictions placed on other authorities (e.g. planning, building control and housing time limits for enforcement or prosecution) that give rise to this. In others it is resource constraints where action is needed 'out of hours' or at a time which will shortly become 'out of hours, or the procedures to be gone through will take a longer time than if the FRA acts.

The predominant issues for enforcement action, including prosecution, are powers to identify and serve on responsible persons, particularly when abroad /offshore. Although a notice can be served on 'the responsible person for', if the authority cannot identify them then any failure to comply with a notice is likely to go unpunished and the matters the notice relates to potentially remain unresolved.

Vast amounts of resource can be spent attempting to properly identify responsible persons for the purposes of taking enforcement action under article 30 and in criminal investigation cases.

For prohibition or restriction, the absence of any power to have the premises vacated (the probability of prosecuting all residents being unlikely) can make such notices largely worthless in the short to medium term, until a prosecution against the responsible person can be brought. The position of the police in relation to removing persons who are in breach of prohibition or restriction notices remains the subject of differing interpretation and implementation (or not) by different police forces.

The imposition of spot fines for significant breaches of the law would serve to provide more immediate justice and encourage compliance. This would however be dependant upon being able to identify the person or company on whom such a fine would be imposed. If the fines imposed reverted to the enforcing body (as they do for Housing Act matters) then this would serve to provide those breaking the law assisting in funding enforcement activity.

In cases where more than one authority has jurisdiction under one or more pieces of legislation it would be helpful for an ability to 'count as if part of' for the legislative requirements to be directly available and if a general ability for those bodies to allow one authority to act for the whole premises for the purposes of all requirements were available. That would allow general and process risk to be addressed in one go, subject to consultation.

Q36. Is the scope of the Secretary of State's power to make regulations under Article 24 of the Fire Safety Order sufficient?

X No

Please explain.

For the benefit of future users it may be useful to expand and clarify the power to ensure matters such as fire prevention, fire risk assessment and qualification of competent persons are not only within scope but can be clearly seen to be in scope. Our understanding is that for the

predecessor legislation The Fire Precautions (Workplace) Regulations 1997 (as amended) it was necessary to use the European Communities Act 1972 due to lack of scope in the identical Fire Precautions Act 1971 regulation making power and that the Regulatory Reform Act 2001 did not allow that scope to be materially extended.

Whether scope should specifically cover the external construction of premises, given that most internal construction is already specifically covered, will be dependant upon the outcome of the wider review and scope of the regime but we consider that it should.

Q37. Are the requirements on Responsible Persons to ensure firefighting facilities are maintained in a sufficient state, efficient working order and good repair, effective?

X No

Please explain.

The effectiveness of article 38 has been reduced by the disapplication of the ability to require maintenance of protective measures for use by the fire and rescue service through the removal of local act provisions via the Building Act 1984 provisions. Precautions and measures may now only be maintained where they are necessary for the protection of relevant persons. The article was intended to require responsible persons to take steps to secure the safety of firefighters undertaking their wider role for the protection of life and property.

The provision could very usefully be extended to allow for new provision where it has been missed though past building regulations approvals, where such provision did not exist or past provision has been shown to be inadequate. The most common examples are lack of rising fire mains in blocks of flats and protection of firefighting shafts.

As noted above, issues arise where the antecedents of measures such as private water mains are not known. Responsibility for the mains can be highly opaque and this can result in inadequate water supplies for firefighting purposes.

Q38. Are the additional Fire Safety Order requirements specific to the presence of dangerous substances sufficient?

X Yes

Please explain.

The requirements appear adequate but it would be helpful to users and enforcers for Government to clarify the application to general fire precautions, to consider how process precautions may be linked and to clarify how this may be used for the purposes of Hazmat signage under article 13 (information for emergency services) as this is a bone of contention

and open to varying interpretations. We are content that it can be used in this way and enforce accordingly.

Q39. Are the additional Fire Safety Order requirements specific to the employment of young people on regulated premises sufficient?

X Yes

Please explain.

The additional requirements are clear though are often not recognised in fire risk assessments. Some clarification of the definition of young persons would be of assistance given changes in the definitions used over time (child/young person). We believe that consideration should be given to similar or the same level of consideration for young people who are not employees beyond mere consideration as potentially vulnerable persons.

Guidance should be more direct about the consideration of young persons as vulnerable persons who may be using premises such as sheltered accommodation or other premises such as community venues, shopping malls and so forth.

Q40. Do you have an example of other fire safety arrangements specific to employees deemed to be especially at risk in a workplace?

X Yes

Please describe your example.

The need for adequately considered and resourced personal emergency evacuation plans for those with physical or mental disabilities or difficulties. All too often these are missed or are limited to the person getting or being assisted to a place or relative safety (e.g. stairwell) to await the fire and rescue service. Consideration of what happens to persons with physical or mental health issues once they have evacuated the premises is also not often considered. A place of final safety may well mean a higher level of safety from other risks (cold, traffic, wandering) than for other members of the general population.

Q41. Is it clear in what circumstances the Fire Safety Order applies to domestic premises being temporarily used for business, commercial or other non-domestic purposes?

X No

Please explain.

Significant confusion arises for premises (notably flats) used for temporary 'holiday' lets given other requirements such as tax and planning allow use for given period of time without any further permissions/requirements.

The position for lodgers is opaque given they can be regarded as living as a member of the family.

Student accommodation with new designs such as cluster flats gives rise to questions locally and in the courts over which parts of the building are or are not covered, depending on the particular design. A issue is whether access corridors and kitchens are considered to be covered or as separate private dwellings. Such premises may also become used for hotel type conference accommodation and move in and out of coverage, which is far from ideal.

The status of houses rented for use as a form of sheltered accommodation with residents supported by a live in (usually 24 hour) carer is unclear.

Section 5: Higher Risk Workplace Buildings and Fire Safety

Q42. What are the key factors that should determine whether a building type is a 'higher risk workplace building' in relation to fire safety when occupied? Please support your views.

Many 'workplaces' are of higher risk until action is taken to reduce the risk to a more acceptable level. This has been an ongoing process over many years. Primarily relevant factors will encompass the presence and quality of general fire precautions, notably fire resisting compartmentation; the ability of premises users to react in case of fire in order to secure their safety; and staffing levels to assist the more vulnerable. Premises size and layout can also be of significant relevance and these factors may, and often do, affect the level of risk. What can be apparent is that not all premises within one 'type' (if that relates to 'use') will necessarily be of higher risk.

Q43. From the building types that have higher fire rates, please select below those that you consider to be 'higher risk workplace buildings' when occupied: (tick all that apply)

- prisons
- hospitals
- supported/sheltered housing
- residential educational buildings

X all of the above

In principle all of the above categories may be considered of a potentially higher risk than some other use categories. However, not all premises within these individual use categories will be of the same risk level or even equivalent risk levels. A small, single storey hospital use premises may be of significantly lower risk than other hospital premises and of lower risk than residential accommodation above a high street shop, notably catering establishments. Relative risk will need to be accounted for if proportionate application of safety regimes is to be achieved.

Q44. Are there any particular buildings within these broad categories (see definitions used at para 60) that you are especially concerned about from a fire safety perspective?

X Yes

Please support your answer.

The supported/sheltered housing sector is a matter of significant concern. Our experience is that although the presence of vulnerable persons is usually noted, the need for heightened levels of risk assessment, planning and organisation and full consideration of the emergency plan/arrangements, can be lacking. The difficulty being that individual units of living accommodation are generally regarded as single private dwellings in a premises operating a

'stay put' strategy but for which little account is (or legally need to be) taken of the ability of the resident to (a) prevent fire and (b) evacuate their dwelling should a fire occur.

Staffing levels to support evacuation across all sectors remain a matter of concern.

Q45. Are the provisions of the Fire Safety Order sufficient to ensure fire safety in 'higher risk workplace buildings'?

X No

Please explain.

We would recommend the ability to require, with immediate effect, interim protection measures in a manner similar to a prohibition or restriction notice so that those matters must be in place during any appeal period so as to ensure safety while longer term works are conducted following service of an enforcement notice.

In the event the reforms set out in the *Building a Safer Future* consultation for the design and construction stage are applied to a set of 'higher risk workplace buildings':

Q46. Do you have any views on how the proposed new requirements at the design and construction stage - such as the safety case and golden thread – could link into the existing regime under the Fire Safety Order at the occupation stage?

X Yes

Please explain.

Regardless of the titles used for the duty holders at various stages of the project, and under different legislation, it is imperative that the baton of information is consistently passed to the person requiring it at any given stage of the construction or refurbishment project. The risk assessment and management plan at design stage should inform the building stages and be updated and modified as the project progresses to result in a final pre-occupation risk assessment and functional management plan that can be passed across for updating on occupation of the premises by users. It should be accompanied, on handover, by relevant supporting documentation (e.g. the type of information anticipated by the current regulation 38 'pack' under the Building Regulations. For any new or refurbished building the reality is that the in-use risk assessment should never be 'from scratch' but should be a result of ongoing revisions of the assessments and plans that have been passed along the supply chain so the level of detail of precautions built into the premises is high from the outset. End users and their risk assessors should not be reliant on 'I have a compliance certificate from building control' as the evidence of what is in the building.

The duty to cooperate and coordinate could and should be clarified to cover from design stage when a contract relating to safety is let and article 5(3) begins to apply through to completion and beyond to handovers from occupier to occupier during the lifespan of the premises.

In response to Q46, you may wish to consider the merits of a duty to co-operate and share information between the dutyholder(s) at the design and construction stage, and the Responsible Person for occupation.

Fire Safety Order duties and proposals for building safety dutyholders

Q47. Is there any aspect of the duties of the accountable person proposed in the *Building a Safer Future* consultation relevant to fire safety that should be considered for a Responsible Person in higher risk workplace buildings?

X Yes

Please explain.

The apparent intention for the accountable person would appear to be to give a legal title and persona to a person appointed under article 18 (and/or article 13 or article 15). Adding to the requirement to appoint competent persons to include that a person must be appointed to oversee all aspects of fire safety (including fire risk assessment and safety case if applied) would assist in directing enforcement activity. If that person were (by virtue of contract) also a person with responsibilities under article 5(3) that would provide direct culpability. As with the accountable person model there would be a need to ensure that person had access to the requisite resources etc. to carry out the function.

Q48. Is there any aspect of the proposed safety case regime in relation to fire safety that should be considered for a Fire Risk Assessment in higher risk workplace buildings under the Fire Safety Order?

X Yes

Please explain.

The nature of the safety case regime under MHCLG proposals remains unclear. However, on the basis of other safety case regimes, consideration of the totality of risk, including that which may be controlled through other legislation (e.g. process fire risk, electrical safety, gas safety) or other safety factors (workplace events such as loss of control, flooding, loss of staff) could and should be included. Effective planning, organisation, control, monitoring and review should also take a broad and holistic view.

Whether more stringent requirements may be necessary would appear to be dependent on a variety of factors including use within type, size of premises and the vulnerability of users including the ability to apply self-help.

In response to Q48, you may wish to consider whether more stringent fire safety duties are required such as a more prescriptive risk assessment process and whether the frequency for carrying out a review of the assessment should be prescribed.

Q49. Is there any aspect of the proposal for the 'golden thread' of information in the *Building a Safer Future* consultation that should be considered for information sharing and management in relation to the fire risk assessment in 'higher risk workplace buildings' under the Fire Safety Order?

X Yes

See answer to Q46. Any information should be laid out in a set form to aid understanding and improve relevance. It must be readily searchable and be subject to a requirement to ensure it is both up to date and readily available to those who need it to ensure safety..

Please explain.

In response to Q49, you may wish to consider whether a fire risk assessment should be digitised to enable this information to be stored and used effectively to help ensure safer buildings.

Q50. Is there any enforcement proposal set out in the *Building a Safer Future* consultation that should be considered to further encourage compliance with the Fire Safety Order in 'higher risk workplace buildings'?

X Yes

Please explain.

Immediate local penalty notices for responsible persons and potentially for accountable persons together with contractors responsible under article 5(3) should be considered.

The ability for the end or intermediate enforcing authority (for the fire safety order or any new regime) to 'halt' work following building control consultation and concerns not being addressed.

Any other considerations

Q51. Is there any other aspect of the proposals set out in the *Building a Safer Future* consultation that should be considered for 'higher risk workplace buildings'?

X Yes

Please explain.

For higher risk workplaces the identification of a person with day-to-day management responsibility would assist in directing enforcement and more particularly some culpability.

However we do believe that great care must be taken over creating a two or even three tier (including the higher risk premises) fire safety regulatory system that may result in confusion or

cause people to gainsay or otherwise seek to negate application of the more onerous measures.

Ultimately, sound standard general fire safety requirements coupled with adequately resourced and trained enforcing bodies equipped with robust enforcement tools should provide effective safety for all premises users and other in the vicinity.