



Home Office

The Regulatory Reform (Fire Safety) Order 2005 Call for Evidence

This consultation begins on 06 June 2019.

This consultation ends on 31 July 2019.

About this Call for Evidence

Who is this for?

This Call for Evidence only considers the application of the Fire Safety Order in relation to non-domestic premises located in England¹. It is targeted at:

- ‘Responsible Persons’ being the owners, occupiers, or other persons in control of the premises – including:
 - for workplaces, employers or sole traders, small and medium businesses and other organisations in the private, public or voluntary sector, and representative bodies
 - for the parts used in common in multi-occupied residential buildings, private landlords or housing providers, managing agents, facilities managers, building managers
- Fire safety professionals
- Enforcing authorities
- ‘Relevant persons’ being lawfully on, or in the vicinity of, said premises and whose safety must be considered in a fire risk assessment – including:
 - for workplaces, employees, contractors and other users of the premises
 - for the parts used in common in multi-occupied residential buildings, residents and visitors

We welcome responses from anyone else with an interest in or experience of the Fire Safety Order.

Annex A provides a quick reference glossary of key terms used and underlined throughout this document to assist respondents with its use.

How to respond

There are four thematic sections in the Call for Evidence, divided into topical subsections which provide background information to the lead question(s).

Respondents can answer as many or as few questions as they wish. You do not have to comment on every section or respond to every question in each section, but to focus on where you have relevant views and evidence to share.

If you wish to respond to all questions, you do not have to complete the whole form at once – you will receive an individual response reference in your acknowledgement of receipt.

¹ Responsibility for the Fire Safety Order is devolved in Wales.

Please submit responses using the online form at <https://www.gov.uk/government/consultations/the-regulatory-reform-fire-safety-order-2005-call-for-evidence>. The closing date for submissions is 31 July 2019 at 23:59.

Alternatively, you may submit your response to:

FireSafetyUnitconsultations@homeoffice.gov.uk

or

Fire Safety Unit consultations
Home Office
2 Marsham Street, Fry Building
London SW1P 4DF

Confidentiality

Responses to this Call for Evidence will be collated and analysed by Home Office staff for the purposes of research and review of the Fire Safety Order only.

Where we are asking for views and evidence on an issue which is also covered in the *Building a Safer Future* consultation – specifically, in sections 3 and 5 of the Call for Evidence – we may share responses with the Ministry of Housing, Communities and Local Government (MHCLG) for the purpose of informing policy development.

Personal information submitted in the ‘About you and your response’ section will be used by the Home Office to communicate with respondents and for analysis unless you indicate otherwise. Any response which is shared with MHCLG or used for quotes in the analysis of responses that we intend to publish will be anonymised or pseudonymised. Full responses will be held solely for the duration of the review of the Fire Safety Order, after which time they will be anonymised and held in accordance with the department’s information management procedures.

The processing of personal data is governed by the Data Protection Act 2018 and General Data Protection Regulation. We will treat your personal information in accordance with the department’s personal information charter which is available online at <https://www.gov.uk/government/organisations/home-office/about/personal-information-charter>.

The Home Office has appointed a Data Protection Officer (DPO) to help ensure that we fulfil our legal obligations when processing personal information. The DPO can be contacted by emailing DPO@homeoffice.gov.uk.

Contents

Foreword	5
About you and your response	6
Introduction	7
Context	7
Alignment with the <i>Building a Safer Future</i> consultation	7
Topics for consideration	8
Next steps	8
Section 2 : Fire Safety Order - Scope and Objectives	9
Scope	9
Main policy objectives of the Fire Safety Order	9
Section 3 : Issues Specific to Multi-Occupied Residential Buildings	11
Overlapping regulatory frameworks for the common areas of buildings	11
Mixed use buildings of 18 metres or more in height	12
Section 4 : General Application - Workplaces and Other Non-Domestic Premises	13
a) Responsible Person	13
b) Fire risk assessment	15
c) Guidance	16
d) Employee training	18
e) Competent person	18
f) Information sharing and management	19
g) Enforcement and sanctions	20
h) Provisions in the Fire Safety Order of specific interest	21
Section 5 : Higher Risk Workplace Buildings and Fire Safety	24
Fire risk building profiles	24
The Fire Safety Order and ‘higher risk workplace buildings’	25
Fire Safety Order duties and proposals for building safety dutyholders	27
Any other considerations	29
Table of Annexes	30

Foreword

Today the government has launched a public consultation, *Building a Safer Future: Proposals for reform in the building safety regulatory system*². This takes forward the recommendations of the Independent Review of Building Regulations and Fire Safety³, led by Dame Judith Hackitt following the Grenfell Tower Tragedy. The consultation seeks views on proposals for a radically new building and fire safety system, covering all multi-occupied residential buildings of 18 metres or higher.

The Regulatory Reform (Fire Safety) Order 2005 – the Fire Safety Order – is the cornerstone of general fire safety legislation and extends to England and Wales, regulating fire safety in a wide spectrum of non-domestic premises, including workplaces and the parts used in common in multi-occupied residential buildings.

The application of the Fire Safety Order, particularly in relation to the parts used in common in high rise multi-occupied residential buildings, was considered by Dame Judith Hackitt during her Review. This Call for Evidence, which complements and is being published alongside the *Building a Safer Future* consultation, is the first step in a process to ensure that the Fire Safety Order continues to be fit for purpose as part of the government's consideration of the wider building safety landscape.

The Call for Evidence will only consider the application of the Fire Safety Order in England. It is targeted at those who have statutory responsibilities under the Fire Safety Order or are otherwise affected by it. This includes enforcing authorities under the Fire Safety Order (Fire and Rescue Services, Fire and Rescue Authorities, Local Government, Health and Safety Executive, the Crown Premises Fire Inspection Group etc), as well as those responsible for the safety of buildings covered by the Fire Safety Order and those working within them.

The views invited below will help to update the evidence base on how the Fire Safety Order is complied with and enforced, help us identify and assess any changes that may be needed and how they may best be achieved. We will use the evidence gathered to inform our next steps, to ensure the high and proportionate standards of fire safety in all buildings covered by the Fire Safety Order.

² <https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system>

³ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

About you and your response

Before you respond, please tell us about yourself.

Q1.	Full name	
Q2.	<p>Are you answering -</p> <p><input type="checkbox"/> individually, - what is your job or sector of activity?</p> <p><input type="checkbox"/> on behalf of an organisation – if so, - what is your role? - what is the organisation’s name? - how many people does the organisation employ?</p>	
Q3.	<p>Contact details: - email address Or - main postal address including postcode</p> <p><u>We will acknowledge receipt of all the responses to the call for evidence.</u></p>	
Q4.	<p>If your response is on behalf of a trade body or other representative group of individuals or organisations, please tick this box <input type="checkbox"/> and provide a brief description of its objectives and membership</p>	
<p>Q5. If you would like your response to remain anonymous, please tick this box: <input type="checkbox"/></p>		

Introduction

Context

1. The Fire Safety Order was introduced to consolidate the previous range of legislation relating to fire safety in workplaces, reduce burdens on business and enforcing authorities from overlapping general fire safety regimes, and bring other non-domestic premises into scope of fire safety legislation. It introduced better regulation through a single regime for fire safety in such premises, based on assessment of risk, removal of hazards and protection of persons from hazards that remain.
2. The Fire Safety Order places fire safety duties on Responsible Persons for non-domestic premises, to adopt a risk-based approach to fire safety and to be responsible for ensuring that general fire precautions are in place so far as is reasonably practicable. In this way the Fire Safety Order promotes the avoidance of fires and mitigation of the effects of fires.
3. The Fire Safety Order came into force in 2006. It has been implemented during a period which has seen a long-term downward trend in the number of fires and fire related fatalities. Since 2010/11 the number of building fires attended by fire and rescue services has fallen from around 65,000 to around 48,500 in the year ending December 2018, a decline of 25 per cent. The number of fire-related fatalities fell by 21 per cent (from 273 to 216) and the number of casualties requiring hospital treatment fell by 30 per cent (from 4,123 to 2,902) over the same time period⁴.

Alignment with the *Building a Safer Future* consultation

4. As a Call for Evidence, this document includes no policy proposals. However, it takes account of relevant proposals set out in *Building a Safer Future* consultation⁵ and refers to them where an issue under consideration relates to the Fire Safety Order:
 - Both documents seek views on the best approach to manage fire safety in multi-occupied residential buildings (any block of flats) where both the Housing Act 2004 and the Fire Safety Order apply in different ways (section 3).
 - The Call for Evidence also seeks views on whether Fire Safety Order requirements for a potential set of higher risk workplace buildings, are appropriate in comparison with the proposed reforms in the *Building a Safer Future* consultation for multi-occupied residential buildings of 18 metres or more (section 5).

⁴ <https://www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables> (Tables FIRE0102 and FIRE0502)

⁵ <https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system>

Topics for consideration

5. Section 2 provides a brief overview of the Fire Safety Order, seeking respondents' views and evidence on its scope and objectives.
6. Section 3 focuses on the overlapping regulatory frameworks (the Fire Safety Order and the Housing Act 2004) for the parts used in common in multi-occupied residential buildings and also mixed use buildings. This section aligns with Chapter 2 of the *Building a Safer Future* consultation.
7. Section 4 asks respondents who are required to comply with the provisions of the Fire Safety Order or to enforce it, to share their experience or observations of its general application and supporting guidance. The selected topics have come to our attention through available evidence and feedback received to date.
8. Section 5 focuses on the findings of Home Office analysis of fire risks by type of building and the identification of a set of 'higher risk' buildings which are workplaces. It draws on relevant aspects of the *Building a Safer Future* consultation. It seeks views on whether the Fire Safety Order provides sufficient fire safety arrangements for 'higher risk workplace buildings' in occupation by comparison with the reforms proposed in the consultation for multi-occupied residential buildings of 18 metres or more in height. It also seeks views on whether relevant aspects of the proposed reforms for residential buildings relating to fire safety should also be applied to 'higher risk workplace buildings' under the Fire Safety Order.
9. Respondents to this Call for Evidence are invited to comment and provide supporting information on these topics, using specific examples of premises in their response. It is open to respondents to comment on other issues relevant to the Fire Safety Order and supporting guidance in the most appropriate section.

Next steps

10. Responses to the Call for Evidence will be analysed and used to assess the effectiveness of the Fire Safety Order and increase our understanding of how it is applied by different groups of stakeholders. This will inform a programme of work to consider what, if any, changes are needed to the Fire Safety Order or its supporting guidance, aligned with the wider work on building and fire safety across government. Ultimately, our objective is to ensure that the Fire Safety Order continues to deliver fire safety in all the premises it regulates and to work effectively alongside other building and fire safety regimes.
11. The Grenfell Tower Inquiry has received evidence from its core participants including on the Fire Safety Order. The Home Office will consider any recommendations made by the Inquiry in due course.

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

- Section 2: Fire Safety Order Scope and Objectives**
- Section 3: Issues specific to multi-occupied residential buildings**
- Section 4: General application – workplaces and other non-domestic premises**
- Section 5: Higher risk workplace buildings and fire safety**

Section 2 : Fire Safety Order - Scope and Objectives

Scope

12. The Fire Safety Order provides the regulatory framework for the ongoing and proportionate management of fire safety in a large number and wide variety of non-domestic premises. These can range from commercial units to centres and office blocks, schools, churches, hospitals, care homes, prisons and include the parts used in common in multi-occupied residential buildings. The scope of fire safety legislation is fundamentally concerned with the safeguarding and protection of human lives over material damage or loss from fire.

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

- Agree strongly**
- Agree somewhat**
- Neither agree nor disagree**
- Disagree somewhat**
- Disagree strongly**

Please explain.

Main policy objectives of the Fire Safety Order

13. The main objectives behind the Fire Safety Order were therefore ambitious and the Order was designed:
- a. To cover a wide range of premises and potential fire risks, the Fire Safety Order was developed in such a way that general fire safety requirements could be applied flexibly through a risk-based approach adaptable to any non-domestic premises.
 - b. To regulate all non-domestic premises as an Order made under the Regulatory Reform Act 2001⁶, it would also rationalise and consolidate previous legislation to reduce burdens on business and enforcing authorities;
 - c. To replace previous regimes with a single, non-prescriptive risk-based regulatory and enforcement regime, based on the transfer of responsibility for ongoing fire safety to those in control of the premises, placing duties on them – including:
 - to carry out a fire risk assessment
 - to ensure – so far as is reasonably practicable – the safety of employees;
 - for relevant persons, to take such fire precautions as may reasonably be required in the circumstances to ensure that premises are safe

⁶ <http://www.legislation.gov.uk/ukpga/2001/6/contents>

- d. To set out guiding principles, such as the principles of prevention listed in Part 3 of Schedule 1 to the Fire Safety Order, and provide guidance for the effective delivery of fire prevention and protection measures under these duties.

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?

- Yes
- No

Please explain.

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

- Yes
- No

Please explain.

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

- Yes
- No

Please explain.

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

- Yes
- No

Please explain.

Section 3 : Issues Specific to Multi-Occupied Residential Buildings

This section is linked to Chapter 2 of the *Building a Safer Future* consultation and both documents discuss the specific issue of regulating fire safety risks in multi-occupied residential buildings.

Overlapping regulatory frameworks for the common areas of buildings

14. Following the Grenfell Tower tragedy in June 2017, Dame Judith Hackitt's Independent Review identified that overlapping regulatory frameworks (the Housing Act 2004 and the Fire Safety Order) for the parts used in common in multi-occupied residential buildings, made it challenging to ensure that there was sufficient oversight and responsibility for fire safety in the whole of these buildings when they were occupied.
15. We are committed to ensure that the Fire Safety Order can work effectively alongside other building safety regimes.
16. The proposed reforms set out in the *Building a Safer Future* consultation will not initially apply to multi-occupied residential buildings under 18m, although the scope may flex over time. We therefore need to consider the best way to ensure that multi-occupied residential buildings under 18m are adequately regulated.
17. Alongside the *Building a Safer Future* consultation, we are seeking views specific to compliance with or enforcement of the Fire Safety Order, on how the issue of overlapping regulatory frameworks should be addressed to ensure fire safety risks are managed in multi-occupied residential buildings.
18. In parallel, the Ministry of Housing, Communities and Local Government is undertaking a separate review of the Housing Health and Safety Rating System (HHSRS), introduced under the Housing Act 2004. This is the inspection tool used by local authorities to identify health and safety hazards – which include fire – from deficiencies in residential premises and common parts. The review is exploring the adequacy of the HHSRS in multi-occupied residential buildings as well as other properties.
19. Both regimes (enforcement under Part 1 of the Housing Act 2004, as assessed by the HHSRS and the Fire Safety Order) look to ensure risks are appropriately managed in multi-occupied residences. We need to understand further the specific risks posed in multi-occupied residential buildings, the best way to regulate them to ensure fire safety and whether we need to take any additional measures, for example create a statutory duty to co-operate between fire and rescue services and local authorities.

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?

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

In responses to Q12-13, you may wish to consider :

- i) Can the Fire Safety Order and the Housing Health and Safety Rating System together adequately regulate fire risks in multi-occupied residential buildings?
- ii) If the Fire Safety Order is disapplied to the parts used in common in multi-occupied residential buildings, what would be the implications?
- iii) If the Fire Safety Order continues to regulate the parts used in common in multi-occupied residential buildings, how might the relevant definition in the Fire Safety Order be revised⁷?

Mixed use buildings of 18 metres or more in height

20. It is common for buildings to be in mixed use – that is, it is a mix of workplace (including commercial premises) and domestic residential use. The most common example is residential flats above restaurants, shops and offices. Where there are two or more Responsible Persons who share or have duties under the Fire Safety Order in respect of premises contained within the same building, the Order already imposes a duty on them to cooperate and coordinate with each other.

21. In the event that there is new legislation for multi-occupied residential buildings of 18 metres or more, we need to consider how this would interact with the existing legal requirements both in the Fire Safety Order (for the commercial parts and the parts used in common in the residential areas) and in the Housing Act (for the residential areas only) to ensure fire safety is managed across the whole building.

22. The *Building a Safer Future* consultation suggests that a new duty to cooperate and coordinate could be imposed where there are two or more persons responsible for fire safety within a building regulated by different legislation, namely a Responsible Person (under the Fire Safety Order) and a new accountable person role proposed for the multi-occupied residential areas of the building 18m and above. This draws from the established principles and requirements set out in the Fire Safety Order.

23. The objective is to ensure fire safety in the whole building by requiring those who are responsible for fire safety in different parts, with duties under separate legislation, to cooperate with each other to enable them to discharge their respective statutory duties; to take all reasonable steps to coordinate measures required and to keep each other informed.

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?

⁷ Article 2 of the Fire Safety Order provides the definition of 'workplace'.

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

24. The main features of the Fire Safety Order are that:

- It is designed to protect those in the workplace from fire, that is employees and any person who is or may lawfully be on – or in the immediate vicinity of – the premises.
- It is non-prescriptive in that it sets out duties that must be complied with, while providing discretion as to how compliance is achieved depending on the circumstances. These include the desired outcomes, not how these will be determined other than by undertaking a fire risk assessment to identify adequate fire protection measures for ensuring fire safety so far as is reasonably practicable.
- It requires ongoing management of fire risks, adapting to the specific fire safety needs of a premises and those using it. The fire risk assessment should be reviewed regularly, and the fire protection measures and firefighting facilities on site must be maintained.
- It is supported by a wide range of guidance documents designed to enable an effective, risk-based approach to comply with the Fire Safety Order, while setting clear lines of accountability for complying with specified duties – and enabling enforcement action in cases of non-compliance.

25. The effective application of the Fire Safety Order relies on compliance and enforcement activity supported by a number of specific duties and guidance. These are divided into the following subsections to ask respondents to share their experience of compliance or enforcement activity under the Fire Safety Order.

26. In this section, it would be helpful for respondents to specify whether each response relates to a workplace or the parts used in common in a multi-occupied residential building (block of flats).

a) Responsible Person

27. The Responsible Person is defined in the Fire Safety Order as a person who has control of the premises, being the employer, the trade or business occupier, or the owner – or any other person with control of the premises. In practice, this may otherwise be a landlord, facilities manager, building manager, or managing agent.

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

- Yes
- No

Please explain.

28. Part 2 of the Fire Safety Order sets out the fire safety duties on the Responsible Person, including to:

- carry out a fire risk assessment of the premises and review it regularly
- take general fire precautions so far as is reasonably practicable
- put in place, and maintain, appropriate fire safety measures
- plan for an emergency
- provide employees with information on risk, fire safety instruction and training
- cooperate and coordinate fire safety measures where there are two or more Responsible Persons in the same premises or building
- appoint one or more competent person to assist them in undertaking preventative and protective measures.

29. Annex B lists the definition of a Responsible Person and the provisions for the duties of a Responsible Person. Where a Responsible Person appoints another person to assist them in assessing fire risks, the Responsible Person retains responsibility for ensuring compliance with the provisions of the Fire Safety Order.

30. Additional requirements of the Responsible Person apply in specific circumstances: the presence of a dangerous substance (see para 56(c) in this Section) and where young people are employed (see para 56(d) in this Section).

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

- Yes**
 No

Please explain.

31. The Fire Safety Order does not require a Responsible Person to be trained or competent, but for statutory duties to be complied with – for example, a fire risk assessment must be demonstrably suitable and sufficient. It provides a compliance framework that is proportionate to the specific fire safety needs of different premises; these may be minimal – particularly in small premises – and so the Fire Safety Order does not stipulate minimum training or competency requirements on a Responsible Person, which could be unnecessary.

32. In practice, the Responsible Person is expected to self-evaluate whether they can fulfil their statutory duties under the Fire Safety Order, mainly through the carrying out a fire risk assessment and the use of published guidance (see guidance subsection below). Where the Responsible Person concludes that they are not able to fulfil their duties in full, they may appoint someone to assist them in the undertaking of such duties to ensure full compliance with the Fire Safety Order. For certain duties, a Responsible Person is required to ensure that they appoint a competent person as defined under the Fire Safety Order (see competent person subsection below). **However, in the event that they are assisted in the undertaking of such duties, a Responsible Person remains accountable for fire safety on the premises at all times.**

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?

- Yes
- No

Please explain.

33. Where there is more than one Responsible Person for shared premises or different premises within a building, they are under a duty to cooperate and coordinate fire safety measures to comply with the Fire Safety Order. Article 22 also requires a Responsible Person to take all reasonable steps to inform other Responsible Persons concerned of risks to relevant persons arising out of or in connection with their conduct. Failure to do so may be a criminal offence where it places one or more relevant person(s) at risk of death or serious injury in case of fire.

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

- Yes
- No

Please explain.

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

- Yes
- No

Please explain.

b) Fire risk assessment

34. The Fire Safety Order requires the Responsible Person to carry out a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions in order to comply with the Fire Safety Order. Each fire risk assessment must be specific to the premises to which it applies, while applying the same assessment model outlined in fire risk assessment guidance (listed at Annex C):

- a. Identify the fire hazards.
- b. Identify people at risk.
- c. Evaluate, remove or reduce the risks.
- d. Record your findings (where applicable, see para 37-38 below), prepare an emergency plan and provide training.
- e. Review and update the fire risk assessment regularly.

35. This means that the general fire precautions taken need to be proportionate and adequate, tailored to the level of fire risk in any specific premises as identified by the risk assessment: if the premises are considered high risk, or have more complex fire protection needs, the fire precautions identified by the fire risk assessment should reflect that.

36. Additionally, under Article 9(3) of the Fire Safety Order, the fire risk assessment must be reviewed regularly to keep it up to date. It should be reviewed if there is a reason to suspect that it is no longer valid or there has been a significant change to the matters to which it relates, such as significant changes to the premises or to fire risks identified as a result of a review.
37. The Fire Safety Order also prescribes information that must be recorded in a fire risk assessment in specific circumstances: where a business occupier employs at least five persons, there is a licence in force in relation to the premises, or an alterations notice requiring this in force in relation to the premises. The prescribed information will be the significant findings of the assessment, including measures that have or will be taken by the Responsible Person in compliance with the Fire Safety Order, and any group of persons identified by the risk assessment as being especially at risk (for example, children who will be on the premises or other vulnerable people).
38. Additional requirements of the Responsible Person apply in specific circumstances: the presence of a dangerous substance (see para 56(c) in this Section) and where young people are employed (see para 56(d) in this Section).

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

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

- Yes
- No

Please explain.

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

- Yes
- No

Please explain.

Q22. To record the fire risk assessment?

- Yes
- No

Please explain.

c) Guidance

39. The Government has produced and makes available a range of guidance on the Fire Safety Order, as required from the Secretary of State by the Fire Safety Order (Article 50). The guidance includes a suite of fire risk assessment guides for different categories of premises to help Responsible Persons to comply with the Fire Safety Order and guidance notes to enforcing authorities.

40. Annex C provides a list of publicly available government guidance on the Fire Safety Order. Enforcing authorities must also have due regard to the Regulators' Code⁸ and Police and Criminal Evidence Act 1984 (PACE⁹) codes of practice when enforcing the Fire Safety Order.
41. Further guidance has been published by other public bodies including the National Fire Chiefs Council and the Local Government Association¹⁰. In addition, it is understood that Fire and Rescue Authorities produce operational guidance for enforcement purposes in their local area.
42. As mentioned above, a key feature of the Fire Safety Order is to be non-prescriptive to enable its application to different premises with specific fire safety needs. Our intention is to ensure that government guidance continues to support compliance and enforcement activity, including in more complex building environments.

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

- Yes
 No

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

- Yes – please specify number(s) / title(s) from the list.
 None – please specify how you ensure compliance with requirements of the Fire Safety Order
 Other guidance used – please specify source(s) and title(s)

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

- Yes
 No

Please explain.

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

- Yes
 No

Please explain.

43. For certain types of premises, fire risk assessment guidance suggests that the Responsible Person identifies relevant persons who are “people especially at risk” – for example, children, the elderly or disabled – in addition to Fire Safety Order requirements specific to the employment of young people (see para 56(d) in this Section).

⁸ <https://www.gov.uk/government/publications/regulators-code>

⁹ <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

¹⁰ Fire Safety in Purpose-Built Blocks of Flats: <https://www.local.gov.uk/fire-safety-purpose-built-flats>

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?

- Yes
- No

Please describe your experience.

d) Employee training

44. The Fire Safety Order requires a Responsible Person to ensure that their employees are provided with adequate safety training both on entering the premises as a new employee and ongoing as and when new risks arise, and on a periodic basis where appropriate. See Article 21 provisions for employee safety instruction and training at Annex B.

45. Additionally, Article 23 places general fire safety duties on employees, including to take reasonable care of their own safety and that of other relevant persons affected by their acts or omissions at work. See Article 23 provisions for the general duties of employees at work at Annex B.

Q28. Are the employee fire safety training requirements sufficient?

- Yes
- No

Please explain.

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

- Yes
- No

Please explain.

e) Competent person

46. The Fire Safety Order requires a Responsible Person to appoint a competent person, being someone who has sufficient training and experience, or knowledge and other qualities, to assist them to properly meet some of their statutory duties. For example, a Responsible Person must ensure whoever will install and maintain the fire precautions and protection measures identified as necessary in the fire risk assessment of a premises, is sufficiently competent to do so. Annex B provides a list of the provisions relating to a competent person under the Fire Safety Order.

47. The Fire Safety Order’s approach to competence is also intended to be non-prescriptive, balancing the need for proportionality in its application to different premises and specific fire risks. In practice, the level of competence sought will vary according to the nature and complexity of the premises: a competent person tasked with fire safety duties in an office environment will draw from a different skill set than in a large capacity transport or music venue, for example¹¹.

¹¹ In April 2014, the National Fire Chiefs’ Council published the Fire Risk Assessment Competency Council’s guide for choosing a competent fire risk assessor:

Q30. Are the competent person requirements sufficient?

- Yes
- No

Please explain.

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

- Yes
- No

Please describe your example.

f) Information sharing and management

48. Under Article 19 of the Fire Safety Order, a Responsible Person must provide comprehensible fire safety information to his employees – including:

- a. Risks to them identified in the fire risk assessment;
- b. Preventive and protective measures;
- c. Safety procedures and measures;
- d. The identity of the nominated competent person(s) appointed to carry out specific fire safety duties;
- e. Fire risks to relevant persons from the activities of any other Responsible Person sharing the premises.

Details of the obligations under Article 19 can be found at Annex B.

49. Where premises are shared or multi-occupied (including in residential and mixed use buildings), the Responsible Persons must engage with one another and share their respective fire safety plans to coordinate measures to ensure such information is provided to all the relevant persons accordingly. Responsibility for fire safety can also change during occupation, through the succession of different Responsible Persons over the lifecycle of a building.

50. There is also a separate duty to ensure employers of contractors working on the premises are provided with information on risk and general fire precautions. Additional requirements of the Responsible Person apply in specific circumstances: the presence of a dangerous substance (see para 56(c) in this Section) and where young people are employed (see para 56(d) in this Section).

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

- Yes
- No

Please explain.

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

- Yes
- No

Please describe your example.

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

- Yes
- No

Please describe your example.

g) Enforcement and sanctions

51. Part 3 of the Fire Safety Order specifies who the enforcing authorities are in respect of certain premises. Fire and Rescue Authorities are the statutory enforcing authorities for a large majority of premises to which the Fire Safety Order applies. The Fire and Rescue National Framework for England requires each Fire and Rescue Authority to have a locally determined, risk-based inspection programme and management strategy in place to ensure compliance with the Fire Safety Order within their area.

52. For specific premises, the following authorities will inspect and enforce the Fire Safety Order as set out in Article 25:

- the Fire Service (maintained by the Secretary of State for Defence), in relation to premises occupied solely by the Crown's Armed Forces.
- the Health and Safety Executive – in relation to any workplace which is, or is on, a construction site (other than one regulated by the Office for Nuclear Regulation) or a ship which is in undergoing construction, reconstruction or conversion or repair by persons other than the master and crew of the ship.
- the Office for Nuclear Regulation in relation to premises for which a licence or permit is required under the Nuclear Installations Act 1965, or a workplace where the Office for Nuclear Regulation is responsible for health and safety enforcement.
- a Local Authority with responsibility for the issue of safety certificates for certain sports grounds, or stands.
- a Fire Inspector or any other person or body being authorised by the Secretary of State for Crown-owned or occupied premises generally.

53. Under the Fire Safety Order the powers of inspectors include access to premises to carry out a compliance visit or inspection and make decisions on enforcement action for the authority to take against a Responsible Person who cannot demonstrate compliance with their duties. If non-compliance is identified, Articles 29 to 31 outline the range of enforcement actions that an enforcing authority can take, including to serve an alterations notice, enforcement notice and/or prohibition notice.

54. Part 4 of the Fire Safety Order specifies the offences and penalties available in case of non-compliance. Enforcing authorities may prosecute a Responsible Person if other methods have failed to achieve compliance, or where serious or deliberate breaches of law have put people at serious risk. For example, this could be where the Responsible Person has failed to comply with the requirements of a prohibition notice.

The maximum penalty on summary conviction for criminal offences under the Fire Safety Order is an unlimited fine and, for more serious offences, in the Crown Court an unlimited fine or imprisonment for up to two years, or both.

55. Additionally, the Secretary of State has the power to make a determination of disputes between a Responsible Person who has failed to comply with the Fire Safety Order and the enforcing authority where they cannot agree on the measures which are necessary to remedy the failure.

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?

- Yes
- No

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?**

h) Provisions in the Fire Safety Order of specific interest

56. This subsection asks respondents to share their experience and practical evidence on the application of Fire Safety Order provisions specific to certain circumstances. These are:

56(a). Article 24 of the Fire Safety Order enables the Secretary of State to make regulations limited to fire safety precautions in relation to the risk to relevant persons in specified premises. For example, the Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009¹² were made to set out the fire precautions specifically required at sub-surface railway stations.

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

- Yes
- No

Please explain.

¹² <http://www.legislation.gov.uk/ukxi/2009/782/contents/made>

56(b). Article 38 of the Fire Safety Order requires the Responsible Person to ensure that their premises, and any facilities, equipment and devices provided for the use by or protection of firefighters are subject to a suitable system of maintenance and are maintained in an efficient state, in efficient working order and in good repair.

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

- Yes
- No

Please explain.

56(c). The Fire Safety Order provides for additional requirements specific to the presence of dangerous substances which can add to general risks to the safety of employees and other relevant persons – for example, on signage and the communication of information on emergency procedures – in the event of a fire. See details of these provisions at Annex B.

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

- Yes
- No

Please explain.

56(d). The Fire Safety Order provides for additional requirements specific to the employment of young people on the premises, as being especially at risk in the event of a fire. Part 2 of Schedule 1 to the Fire Safety Order lists ‘matters to be taken into particular account in risk assessment in respect of young persons’. See details of these provisions at Annex B.

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

- Yes
- No

Please explain.

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

- Yes
- No

Please describe your example.

56(e). During certain times or periods, private dwellings may be used for business, commercial or other non-domestic purposes – such as short-term holiday lets – which may involve use of the premises by employees or other relevant persons.

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?

Yes

No

Please explain.

Section 5 : Higher Risk Workplace Buildings and Fire Safety

This section is linked to the *Building a Safer Future* consultation and discusses the specific issue of regulating fire safety risks in workplaces – when occupied – with higher rates of fire.

57. The *Building a Safer Future* consultation (Chapter 2) refers to the guiding principle of applying more rigour to managing buildings that have the potential for catastrophic incidents that could cause multiple fatalities. Initially, the scope of the new regime proposed in the consultation will apply to residential multi-occupied buildings (block of flats) of 18 metres or more. The consultation also seeks views and evidence on including non-residential buildings where multiple people sleep – ‘higher risk workplace buildings’ – in the scope of the reforms at the design and construction stage.
58. We are looking to establish whether the Fire Safety Order provides sufficient fire safety arrangements for ‘higher risk workplace buildings’ in comparison to the reforms proposed in the *Building a Safer Future* consultation for multi-occupied residential buildings of 18 metres or more. We are also seeking views on whether relevant aspects of the proposed reforms for residential buildings relating to fire safety should also be applied to ‘higher risk workplace buildings’ under the Fire Safety Order.

Fire risk building profiles

59. We have undertaken research to better understand the fire risk profiles of different building types¹³. (See Annex D: Rates of fires, fire-related fatalities and casualties requiring hospital treatment in different types of building, given as per 1,000 buildings.)
60. The research outlines rates of fires and rates of fires involving fatality or casualties requiring hospital treatment by building type and height. Overall, the analysis shows that there are several building types – other than multi-occupied residential buildings – which provide accommodation for multiple people to sleep and which have higher fire rates compared to other buildings. These are:
- i. **Prisons** – prisons, immigration removal centres and other secure premises¹⁴. Prisons were identified as the highest risk overall in comparison to other buildings types with a rate of 5,021 fires per 1,000 buildings. This was also the case in terms of fatalities and hospital casualty rates where there were 1,473 per 1,000 buildings.

¹³ The analysis was designed to explore the relative rate of fires across different types of building and did not take into account the number of individual dwellings or occupants within each building. Therefore, although some building types have higher rates of fires than others this is likely to be because of the higher occupancy rates in larger buildings.

¹⁴ For the purpose of the research prisons covers: prisons (including public sector and private prisons), detention centres and secure residential accommodation

- ii. **Hospitals** – health care institution providing patient treatment where patients are kept in overnight or for an indeterminate time¹⁵ (263 fires per 1,000 buildings and 49 fatalities or casualties requiring hospital treatment per 1,000 buildings)
- iii. **Supported/sheltered housing** – premises where vulnerable people are supported and provided with a safe and secure home¹⁶ (158 fires per 1,000 buildings and 61 fatalities or casualties requiring hospital treatment per 1,000 buildings) and
- iv. **Educational buildings** – boarding schools and halls of residence¹⁷ (56 fires per 1,000 buildings and 9 fatalities or casualties requiring hospital treatment per 1,000 buildings).

The Fire Safety Order and ‘higher risk workplace buildings’

61. As the *Building a Safer Future* consultation makes clear, the higher fire rates in the types of buildings set out above suggest that there is a case to consider whether to extend the scope of the proposed regime at the design and build stage beyond residential buildings to include ‘higher risk workplace buildings’. When fire and structural risks inherent to these buildings are considered at the earliest stages of a building’s lifecycle, it may be possible to mitigate many of the risks prior to the occupation stage.
62. The Fire Safety Order will continue to apply to these buildings during the occupation stage. The Fire Safety Order already provides a flexible legal framework, within which fire risks should be assessed in a way that is tailored to any given premises to ensure the safety of employees and other relevant persons; it already places a requirement for a Responsible Person to undertake a fire risk assessment as well as being subject to a number of further duties relating to fire safety. Whilst some of the proposals in the *Building a Safer Future* consultation already align with existing requirements under the Fire Safety Order, others are not relevant to workplaces – for example, proposals relating to residents’ engagement. Fundamentally, the Fire Safety Order also already provides a ‘whole building’ fire safety approach in these workplaces¹⁸.
63. Aligning with the considerations set out in the *Building a Safer Future* consultation, we also want to understand better the risks in ‘higher risk workplace buildings’, once fire mitigation measures are taken into account, and what is driving the fire rates from the perspective of fire risks in occupation and the operation of the Fire Safety Order. We are keen to obtain more evidence or expert experience on the key factors that are causing the rates of fire to be higher.
64. Moreover, some of the definitions we have used in the research to identify ‘higher risk workplace buildings’ have been widely drawn owing to how data on fires is collected

¹⁵ For the purposes of the research, hospitals covers: hospitals where analysed by building not whole hospital complex and includes onsite accommodation for healthcare professionals

¹⁶ For the purpose of the research supported/sheltered housing covers: sheltered accommodation (including children’s/retirement home, orphanage, hostel, retirement, refuge/ residential centre, non-commercial lodging), communal residence, non-commercial lodgings, residential institution

¹⁷ For the purpose of the research, residential educational buildings covers: boarding school accommodation and student hall of residence

¹⁸ The *Building a Safer Future* consultation seeks views on how to determine whether some or all categories of supported/sheltered housing should be subject to the new regulatory arrangements proposed at the occupation stage for multi-residential buildings.

(this is explained in Annex D). For example, while the data identified supported/sheltered housing as having higher rates of fire and fatalities or significant casualties, these include a wide range of building types. Similarly, we need to consider all the building types that have been covered in our research definitions of prisons and hospitals and whether our definitions need to be refined.

65. We also need to consider whether other types of buildings subject to the Fire Safety Order may – as a result of their use – also present the potential for catastrophic incidents that could cause multiple fatalities. For example, care homes do not feature strongly in the fire risk profiles research although, due to the vulnerability of the occupants, we need to consider whether care homes also present a higher risk.

**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.**

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
- all of the above
- none of the above
- other – please specify.

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?

- Yes
- No

Please support your answer.

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

- Yes
- No

Please explain.

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?

- Yes
- No

Please explain.

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

66. Section 4 summarises the duties of a Responsible Person that must be complied with under the Fire Safety Order. It asks about the practical aspect of establishing who is responsible for fire safety in any given premises, and whether the range of duties are sufficient to ensure they are and can be held to account for fire safety there.
67. The *Building a Safer Future* consultation proposes creating in law an accountable person role for the occupation stage of residential buildings in scope. The accountable person will be legally responsible for ensuring that building safety risks to occupants are reduced so far as is reasonably practicable. This will be delivered through a system of registration and building certification. This accountable person will be responsible for applying for and meeting the conditions of the building safety certificate. The mandatory conditions of the building safety certificate will set out the key requirements of the new regime, including engaging with and providing key information to residents, and maintaining the 'golden thread' of information on the safety of the building.
68. The *Building a Safer Future* consultation also proposes that residential buildings in scope should also be subject to a safety case regime. The consultation outlines that a building safety case should be:
- a structured argument that goes beyond a risk assessment and demonstrates that fire and structural risks are being managed so far as it is reasonably practicable;
 - supported by a body of evidence;
 - a compelling case that the building is safe for occupation and use; and
 - kept under constant review.
69. The *Building a Safer Future* consultation also proposes that a 'golden thread' of information on the safety of the building be created, maintained and held digitally as a key dataset to enable successive dutyholders can use this information to ensure building safety at every stage of its lifecycle.

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?

- Yes
- No

Please explain.

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?

- Yes
- No

Please explain.

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?

- Yes
- No

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.

Enforcement and sanctions

70. Section 4 (and Annex A) sets out the enforcement framework provided by the Fire Safety Order and asks about its application by the different enforcing authorities and the effectiveness of the current powers and sanctions available.

71. The *Building a Safer Future* consultation proposes that the body responsible for overseeing the new regime will provide effective incentives to those responsible for buildings to deliver high standards of safety, thereby complying with the system. It is proposed doing so through a three-step approach:

- a. **Reinforcement of operating standards and provision of professional guidance:** initially, the regulator will work informally with the dutyholders / accountable persons, evidencing its intervention, to secure compliance.

- b. **Proactive intervention and monitoring:** If the above step fails, the regulator could look to stage interventions to secure compliance. Generally, this could be through taking action such as (but not limited to) issuing stop notices or improvement notices.
- c. **Enforcement action:** If non-compliance persists, the regulator can take formal enforcement action against dutyholders / accountable persons. This may be through formal orders, penalties, or by reviewing the building safety certificate which may, ultimately, lead to revocation. The regulator may also decide to prosecute the dutyholders / accountable persons.

72. The Fire Safety Order already provides an enforcement and sanctions regime, where inspectors may issue a range of enforcement notices. These are statutory notices which require the Responsible Person to remedy issues identified in the notice in order to comply with the Fire Safety Order. However, if non-compliance persists or is of a more serious nature, an inspector can take further enforcement action including a prohibition notice (preventing occupation of the premises) and prosecution in the most serious cases.

73. In addition, to overcome drawbacks such as the delay and cost inherent in prosecution, the *Building a Safer Future* consultation proposes to introduce fixed and variable monetary penalties for building safety breaches. It is envisaged that proposing a more stringent sanctions regime will strengthen the enforcing authority's powers to deliver satisfactory outcomes more quickly and more efficiently, in addition to being able to use criminal sanction for the more serious offending and repeated non-compliance.

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'?

- Yes
- No

Please explain.

Any other considerations

74. This section has sought to cover the key proposals of the *Building a Safer Future* consultation as they may relate to the 'higher risk workplace buildings' and the Fire Safety Order. Other proposals may be relevant such as those relating to competence which is already touched on in section 4.

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'?

- Yes
- No

Please explain.

Table of Annexes

A. Glossary of terms used in this Call for Evidence

Table 1. Simple guide together with full definitions of terms used in the Fire Safety Order.

Table 2. Terms from the *Building a Safer Future* consultation glossary

B. Legal annex: Fire Safety Order provisions referenced in this Call for Evidence

- a) Duties of a Responsible Person
- b) Risk assessment
- c) Guidance
- d) Employee training and duties
- e) Competent Person
- f) Information sharing and management
- g) Enforcement and sanctions
- h) Provisions of specific interest

C. List of government guidance on the Fire Safety Order

Fire risk assessment guides

Guidance notes on the Fire Safety Order

D. Rate of fires, fire-related fatalities and casualties requiring hospital treatment in different types of building

Table A1: Examples of buildings in each property type

Table A2: Rates of fire per 1,000 buildings for the combined years ending September 2012 to 2018

Table A3: Rates of fires involving fatality or casualty requiring hospital treatment per 1,000 buildings for the combined years ending September 2012 to 2018

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/consultations/the-regulatory-reform-fire-safety-order-2005-call-for-evidence>.

Any enquiries regarding this publication should be sent to us at public.enquiries@homeoffice.gsi.gov.uk.