



Home Office

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

Summary of Responses

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Introduction and contact details

This document is the summary of responses received for 'The Regulatory Reform (Fire Safety) Order 2005: Call for Evidence'.

It will cover:

- the background to the Call for Evidence;
- an executive summary of responses to the Call for Evidence;
- a thematic summary of responses to questions asked in the Call for Evidence; and
- next steps.

Further copies of this report and the Call for Evidence can be obtained by contacting the Fire Safety Reform team at the address below:

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

Alternative format versions of this publication can be requested from FireSafetyUnitconsultations@homeoffice.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Background

The Regulatory Reform (Fire Safety) Order 2005 – the Fire Safety Order – provides a framework for regulating fire safety in all non-domestic premises including workplaces and the parts of multi-occupied residential buildings used in common in England and Wales. In May 2018, Dame Judith Hackitt published the “Building a Safer Future: Independent Review of Building Regulations and Fire Safety”¹ which concluded that, following the Grenfell Tower tragedy the previous year, there must be a whole-building approach to fire safety which required systemic change from design and build to occupation stages. 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.

In June 2019, the Home Office published a Call for Evidence on the Fire Safety Order inviting views on the application of the Order in England². The intended objectives of the Call for Evidence were to update the evidence base in relation to how the Fire Safety Order is complied with and enforced and help with the identification and assessment of any changes that might be needed and how they might best be achieved. The overall aim was to use the evidence gathered to inform next steps to ensure high and proportionate standards of fire safety in all regulated premises.

The Call for Evidence, which complemented the “Building a Safer Future” consultation³, launched simultaneously by the Ministry for Housing, Communities and Local Government, was 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.

Both the Fire Safety Order Call for Evidence and “Building a Safer Future” consultation ran from 6 June – 31 July 2019 and were open to the public. Today we are publishing a high-level summary of the responses received to the Regulatory Reform (Fire Safety) Order 2005: Call for Evidence.

¹ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

² Responsibility for the Fire Safety Order is devolved in Wales.

³ <https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system>

Executive Summary

The Call for Evidence included 51 questions to understand respondents' interests and sought views and information on four broad sections relating to the Fire Safety Order:

- scope and objectives;
- multi-occupied residential buildings;
- workplace and non-domestic premises; and,
- higher-risk work place buildings and fire safety.

We received 264 valid responses to the Call for Evidence covering a wide range of sectors and interest in fire safety. Most respondents agreed that the scope and objectives of the Fire Safety Order remain appropriate for all regulated premises, that it should retain its focus on protecting lives over property, and that it should continue to provide a framework for a risk-based and proportionate approach to regulating fire safety. However, the responses to the Call for Evidence have highlighted that there are areas which need further consideration, notably:

- a. The self-identification of the Responsible Person and the assurance that they understand and hold the competence to carry out their fire safety duties;
- b. The need to update current guidance which supports the legislation for Responsible Persons and enforcing authorities, including whether it is accessible for the broad range of persons covered by the Order;
- c. The overlap of legislation, specifically the Housing Act 2004 and Fire Safety Order, that exists in multi-occupied residential buildings;
- d. The effectiveness of current provisions for enforcement under the Fire Safety Order; and
- e. The sharing of fire safety information between individual Responsible Persons, and between the Responsible Persons and other relevant personnel involved in the fire safety of the building, for example authorities and Relevant Persons.

The range of areas raised by respondents are being considered to determine next steps and a consultation will be held in spring 2020 on these proposals. Ultimately, the Government's objective is to ensure that the Fire Safety Order continues to effectively regulate fire safety in all the premises subject to the Fire Safety Order as part of the consideration of the wider building safety landscape.

Thematic Summary of Responses

Section 1: The Report and Responses

1.1 The Call for Evidence sought views from those who have statutory responsibilities under the Fire Safety Order or are otherwise affected by it. These included enforcing authorities under the Fire Safety Order (e.g. Fire and Rescue Services, Fire and Rescue Authorities, Local Government, Health and Safety Executive, and the Crown Premises Fire Safety Inspectorate), those responsible for the safety of buildings covered by the Fire Safety Order and those working within them, and a diverse range of other interested parties.

1.2 In total, 51 questions were asked in the Call for Evidence to understand respondents' interests and seek views and information on four broad sections relating to the Fire Safety Order: scope and objectives; multi-occupied residential buildings; workplace and non-domestic premises, and higher-risk workplace buildings and fire safety. The Call for Evidence focused on discrete technical matters, however some responses included opinions based on experience and non-technical observations. Responses also included many proposals for minor amendments, the provision of examples and the re-telling of personal experiences.

1.4 A total of 291 responses to the Call for Evidence were received. Of the 291 responses, 27 were duplicates, incomplete or out of scope resulting in a final count of 264 single responses – including from 46 organisations responding on behalf of member professionals or organisations in their sectors of activity. These 264 responses were subsequently grouped into three high-level categories: (a) enforcing authorities and their representative bodies under the Fire Safety Order (59); (b) professionals, businesses and other organisations in the fire sector (60); and, (c) all other respondents, ranging from those whose activities are partly regulated by the Fire Safety Order, to others with more generic interests in fire safety (145). Respondents were not required to respond to every section of the Call for Evidence or answer every question within each section. [Annex A](#) provides a list of the professional and trade organisations who responded on behalf of members in their sectors of activity.

1.5 Responsible Persons were the least represented cohort in responses from small or medium business owners (including property owners), employers outside the fire sector and the voluntary sector. The public sector was well represented with responses received from enforcing authorities, local authorities, and social housing, building control and environmental safety services. Responses from individuals included a variety of professionals in the public and private fire sector, including sole traders and small business owners, as well as those in building, environmental, and health and safety professions. Very few responses were received from residents in multi-occupied residential buildings and owners or occupiers of higher-risk workplaces.

Section 2: Fire Safety Order - Scope and Objectives

Section 2 of the Call for Evidence sought views on the scope and main policy objectives of the Fire Safety Order. Questions focused on understanding whether the legislation met its intended objectives. We received 192 responses to this section of the Call for Evidence.

Scope

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

2.1 A majority of respondents agreed that the scope of the Fire Safety Order should continue to focus on safeguarding and protecting human lives over material damage or loss from fire. Respondents who proposed to amend the scope of the Fire Safety Order generally sought to ensure that it could provide for the entire fire safety system for multi-occupied residential buildings, or to extend its remit for risk assessments to cover the impact of loss to fire of a building on businesses and local communities (for example, schools, hospitals, listed buildings).

Main policy objectives of the Fire Safety Order

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?

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

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

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

2.2 Most respondents considered that the Fire Safety Order provided for a flexible risk-based approach to fire safety in any non-domestic premises. Most respondents also agreed that it provided a proportionate legislative framework for ensuring fire safety for business and enforcement. The objectives found to be less successful by respondents included those where the Fire Safety Order makes those in control of regulated premises take responsibility for fire safety, and where the Fire Safety Order supports compliance and enforcement through guiding principles and guidance.

2.3 Respondents proposed improvements to both the Fire Safety Order and its supporting guidance in relation to the Responsible Persons. A common view was that current guidance was out of date, lacked clarity, and was overly complex for non-specialist audiences. Some respondents also found guidance for the Responsible Person to be too vague and inadequate for their premises. Respondents also used this section to outline

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options to better support compliance with the Fire Safety Order. Proposals included providing greater clarity on the definition of a Responsible Person and the terminology related to their duties in order to ensure that these were understood; the addition of certain requirements that set minimum standards; the provision of examples to support a Responsible Person in assessing fire safety in their premises; and, a new benchmark criterion for Responsible Persons to demonstrate compliance with their duties to enforcing authorities. There was also a common desire amongst respondents for a more proactive regulatory approach to identify non-compliance at the early stages and for the promotion of fire prevention.

Section 3: Issues specific to Multi-Occupied Residential Buildings

Section 3 of the Call for Evidence sought views on how best to manage fire safety in multi-occupied residential buildings where both the Housing Act 2004 and the Fire Safety Order apply to the parts used in common of such premises, including in mixed use buildings⁴. This section of the Call for Evidence linked to Chapter 2 of the “Building a Safer Future” consultation. Both documents sought to discuss the specific issue of regulating fire safety risks in multi-occupied residential buildings. We received 154 responses to this section of the Call for Evidence.

Overlapping regulatory frameworks for the common areas of 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?

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

Mixed use buildings of 18 metres or more in height

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?

3.1 Respondents’ views in this section were mixed, although most took the view that some intervention was needed to address the regulatory overlap. Suggested means of intervention included:

- clarifying circumstances when the Housing Act 2004 and Fire Safety Order apply;
- adopting a single piece of legislation for specific buildings, potentially through the disapplication of the Fire Safety Order for multi-occupied residential or mixed-use buildings;
- extending the powers of regulators to mirror their respective powers in areas of overlap to avoid one regulator being dependent on another to cooperate;
- adding a requirement where appropriate, for relevant legal persons or entities to oversee a Responsible Person’s activities and the fire safety system of the building(s) they own or occupy, otherwise creating new duties under existing

⁴ . The Housing Act makes provisions about housing conditions in all dwellings in use. It also applies to the common parts (widely defined to include structure and exterior of the building). The Fire Safety Order is primarily workplace legislation, covering fire safety in non-domestic premises. In multi-occupied residential buildings, the FSO applies to the parts of the building that are used in common by occupants from more than one household or workers.

legislation that require a fire safety governance structure to be established to clearly identify the different Responsible Persons and other duty holders within a building;

- defining the term “parts used in common” in multi-occupied buildings regulated by the Fire Safety Order;
- adding reciprocal provisions in both the Fire Safety Order and the Housing Act 2004 where they both apply to parts of a building, for a Responsible Person and equivalent duty holder under the other regime(s) to engage and ensure there is a whole building fire safety system. Alternatively, guidance for Responsible Persons and duty holders to explain the interactions needed between them, alongside guidance for enforcing authorities to promote best practices of cooperation with other regulators to respond to instances of non-compliance in such buildings; and
- making an Accountable Person for proposed new building safety legislation the lead Responsible Person for premises regulated by the Fire Safety Order within buildings to which both regimes apply, alongside a requirement for the registration or publication of their identity to assist regulators when taking enforcement action and to make such information available to relevant persons.

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

Section 4 of the Call for Evidence sought views and evidence on the effectiveness and application of the Fire Safety Order's existing provisions and supporting guidance. We received 180 responses to this section of the Call for Evidence.

Responsible Person

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

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

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

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

4.1 Whilst most respondents considered that a Responsible Person's duties were sufficient, a majority of responses reported:

- issues in establishing who the Responsible Person was across different types of premises they occupied or regulated;
- instances of non-compliance with the duty to cooperate between Responsible Persons in multi-occupied buildings; and,
- instances of non-compliance with the Responsible Persons' duty to coordinate fire safety measures in shared premises.

4.2 Many respondents believed that simplifying guidance to enable Responsible Persons to self-identify, understand and comply with their duties was a necessary first step. Respondents suggested that more fire prevention activity could raise awareness of the Fire Safety Order. This could target Responsible Persons, adapting messages to suit the range of Responsible Persons under the Order, to support better self-regulation. Respondents also suggested that more clarity could be provided in the definition of a Responsible Person and their duties.

4.3 Respondents who believed the duties were insufficient found that they were not specific enough, which led to challenges in taking enforcement action, particularly in complex building, with the associated guidance also not assisting such action.

4.4 Most enforcing authorities highlighted the difficulties encountered when attempting to identify a Responsible Person. These included the lack of awareness of the Fire Safety Order amongst property owners and occupiers; the absence of contact details for a Responsible Person; Responsible Persons living abroad and being uncontactable; complex management structures; the complexity of contractual arrangements in multi-occupied residential buildings; and whether some designated Responsible Persons had sufficient knowledge or authority to fulfil their duties. Such issues were considered to undermine the speed and effectiveness of inspections, enforcement action and prosecution.

4.5 Respondents also pointed to the difficulties in identifying a Responsible Person, which gave rise to concerns about downstream compliance issues. This included on the duties to cooperate and coordinate fire safety measures in multi-occupied buildings and the current absence of a general requirement for a lead Responsible Person. Factors associated with cooperation and coordination issues commonly ranged from instances where Responsible Persons delegated or contracted out duties to a third party, to disputes between Responsible Persons on the extent of their respective responsibilities for fire safety in shared premises and any associated costs. Some respondents suggested that this could be mitigated through the designation of a 'lead' Responsible Person to oversee or coordinate across multi-occupied and complex buildings.

4.6 A majority of respondents considered that it should not be left to a Responsible Person to self-evaluate whether they were competent to fulfil their fire safety duties. The reasons provided for this included concerns that the existing guidance did not provide sufficient support to enable Responsible Persons to assess their own competence to carry out this role. Respondents also questioned the lack of a requirement for competency checks on a Responsible Person. Most respondents, including those supportive of the current approach, suggested that simplified guidance targeted at the Responsible Persons would assist this. Alternative proposals included a registration, accreditation or peer-review scheme.

Fire risk assessment

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

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

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

Q22. To record the fire risk assessment?

4.7 Many respondents were broadly supportive of the requirements for Responsible Persons to carry out a fire risk assessment provided that a Responsible Person or those that they appoint on their behalf was suitably competent to undertake one. Respondents noted the need for updated guidance on fire risk assessments for Responsible Persons which could specify what a risk assessment should include in order to demonstrate

compliance. Clarification in the legislation was also proposed as a means to enhance the quality of a fire risk assessment, along with suggestions of greater prescription for the contents of a fire risk assessment, and the frequency of review. Most respondents were supportive of the current requirements for a regular review of the fire risk assessment.

4.8 Some respondents felt that the requirements for recording a fire risk assessment were sufficient. Those who disagreed questioned the value of the five-employee threshold to record prescribed information in a fire risk assessment. This was based on the perception that the five-person threshold was open to abuse, as it was difficult to evidence a breach of the Responsible Person's duty to undertake a fire risk assessment without a copy of it. Some respondents also commented that fire risk assessments lacked a 'person-centred' approach to groups of people particularly at risk, particularly those with an element of 'vulnerability' irrespective of the premises. In relation to appointed fire risk assessors specifically, some respondents believed that this part of the fire sector should be further regulated.

Guidance

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

Q24. Have you used any government guidance listed at Annex C [to the Call for Evidence]?

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

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

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?

4.9 The vast majority of respondents were aware of government guidance and had used at least one type. Most respondents considered that in order to better support compliance and enforcement the current guidance needed to be reviewed and updated in order to meet the diverse needs of its intended audiences, both in terms of range of premises covered and individuals affected by the Order. Amongst enforcing authorities, there were suggestions that the Government should publish national operational guidance or an approved code of practice.

4.10 Although many respondents identified gaps in the existing guidance to complement the current range when updated, there were mixed views on whether there should be more or fewer documents providing guidance to address those gaps. Respondents provided information about the risk assessment considerations for those people with mobility restrictions and assessments in hospitals and/or care homes. Some highlighted that only limited guidance exists for such premises, leading to inappropriate location of those with

restricted mobility on upper floors. Other respondents provided information about the Responsible Person and the quality of risk assessment considerations due to the quality of guidance available to support them.

Employee training

Q28. Are the employee fire safety training requirements sufficient?

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

4.11 A significant majority of respondents considered that the existing fire safety duties on employees were sufficient. Views were divided on whether the current provisions for fire safety training of employees were sufficient. Amongst those who considered that they were not sufficient, there were proposals for the legislation to clarify the term “adequate”, owing to concerns over the quality of training on offer. Some respondents provided examples of poor practice, including a lack of employee fire safety training over an extended period, and the absence of the evaluation of training provided. Some respondents suggested that a Responsible Person should record and review fire safety training outcomes with employees, or regulation in the fire safety training industry to drive up standards.

4.12 Regulators believed that fire safety training should not be limited to online teaching, but include situational exercises, such as evacuations, tailored to the premises that the employees used and taking into account their responsibility for the safety of relevant persons who might be present on the premises. In addition, such respondents indicated that the quality of fire safety training can be dependent on the size of the business, such that employees in larger organisations would be better equipped to fulfil their employee fire safety duty under the Fire Safety Order.

Competent person

Q30. Are the competent person requirements sufficient?

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

4.13 Most respondents deemed the existing provisions for the competent person to be insufficient and called for greater clarity around the fire safety qualifications, training and experience which would indicate that a person was regarded as ‘competent’. Respondents suggested setting out relevant benchmarks in guidance for the Responsible Person. They also suggested that a requirement for the continued assessment of competence following the appointment of a competent person is added, whether through legislation, or a registration or accreditation scheme.

4.14 It was noted that there was some confusion amongst respondents as to whether fire risk assessors were included within the definition of ‘competent person’ in the Fire Safety Order. Many of the examples provided by respondents to support the view that the competent person requirements were insufficient, in fact related to fire risk assessors.

4.15 Respondents gave examples of how they evaluated whether a person was competent under the Fire Safety Order according to the existing guidance and requirements as well as the specifications of the premises where they would be appointed to operate.

Information sharing and management

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

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

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

4.16 Many respondents considered that the existing provisions for the sharing and management of fire safety information were sufficient. The remainder noted that guidance to Responsible Persons could clarify what information would be relevant to communicate to specific audiences, and that the addition of a legislative requirement could ensure that fire safety information was shared between those in control of parts of the same premises but subject to separate regimes.

4.17 Respondents also provided examples of how information was selected and shared with employees or relevant persons, and how successive Responsible Persons hand over fire safety information to ensure continuity. In contrast, another common response was that businesses did not store or maintain fire safety information centrally.

Enforcement and sanctions

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?

4.18 Some of the respondents considered that the Fire Safety Order did not provide an effective enforcement framework owing to a lack of clarity (or to its flexibility to regulate any non-domestic premises), specific inconsistencies between some of its provisions, and regulatory overlap issues with the Housing Act 2004 already identified.

4.19 Respondents called for updates to be made to the guidance, including in relation to the provision of advice by enforcing authorities to businesses, with a view to achieving better outcomes and greater consistency of approach to regulation and inspection of premises. Some respondents favoured an increase in proactive regular inspection activity to ensure that more regulated premises met the requirements of the Fire Safety Order, thereby promoting compliance and supporting self-regulation, whilst also tackling breaches early. Others believed that more powers and sanctions were needed. Further suggestions included refining or adding specific requirements to the Responsible Person's duties to set fixed

compliance benchmarks which enable more effective regulation and enforcement. The need for additional resource was also raised.

Provisions in the Fire Safety Order of specific interest

Power to make regulations about fire precautions

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

4.20 A significant majority of respondents were satisfied with the Secretary of State's power to make regulations specific to certain types of premises. Most of the regulators responding to this question believed that the regulation-making power could be used further to increase fire safety standards specific to certain higher-risk workplace buildings.

Maintenance of measures provided for protection of fire-fighters

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

4.21 Most respondents who were not regulators believed that the requirements on the Responsible Person were sufficient. The majority of regulators took a different view. They noted that failings in ensuring enough fire safety facilities in buildings at the design and build phase could render the maintenance duty ineffective. This was due to a belief, on the part of enforcing authorities, that if premises were compliant with building regulations at the design and build stage, then, once occupied, they could not require a Responsible Person to install or upgrade the original firefighting facilities. They shared the view that, in the event of an emergency, this created unnecessary risks for firefighters who would be required to both tackle the fire and, if needed, rescue relevant persons. For this reason, regulators suggested a new power to require such upgrades where appropriate or, alternatively, to address this issue through retrospective building regulations.

Additional provisions in respect of dangerous substances

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

4.22 Respondents views were divided on the sufficiency of the additional Fire Safety Order requirements specific to the presence of dangerous substances. Proposals were made to publish more adequate information on these requirements and to update the guidance (currently, the 'Fire safety risk assessment: factories and warehouses') to better support compliance. In addition, there were requests to clarify the existing requirements for the undertaking of a fire risk assessment involving dangerous substances under the Fire Safety Order, the Health and Safety legislation, and the Dangerous Substances Explosive Atmosphere Regulations 2002, including how they all interact and how the users of this guidance could demonstrate compliance.

Fire safety considerations in respect of young people

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

4.23 Overall, a large majority of responses were supportive of the existing provisions specific to young employees, with the main caveat relating to the quality of available guidance. Respondents proposed that current guidance to Responsible Persons and enforcing authorities on these requirements be updated. A small number of respondents also suggested extending the remit of the legislation to include duties relating to fire safety in relation to 'vulnerable' persons. Some respondents also suggested that the legislation should be updated to cover issues related to the vulnerability of employees or other relevant persons

Fire safety considerations in respect of groups of people identified as being especially at risk

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

4.24 Most examples of fire safety arrangements provided by respondents were focused on the development and use of Personal Emergency Evacuation Plans (PEEPS) for those who are especially at risk, mainly linked to an element of 'vulnerability' of employees. Some respondents raised that Responsible Persons were overlooking some 'at risk' groups that could include residents/occupants in premises such as care homes and specialised housing, temporary staff, lone workers, and external contractors. Respondents also raised that Personal Emergency Evacuation Plans (PEEPs) and risk assessments should take more of a person-centred approach and take employees' individual needs into account and assist in the assessment of risk more adequately to ensure safety for those that might need assistance during evacuation.

When the Fire Safety Order applies to domestic premises used for other purposes

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?

4.25 Respondents, including some enforcing authorities, expressed confusion over the circumstances in which the Fire Safety Order applied to premises being temporarily used for business, commercial or other non-domestic purposes. Examples included domestic premises in 'dual use', such as homes where care or other services were provided, and short-term, peer-to-peer lets of private dwellings. These respondents often asked to clarify the relevant guidance, 'Do you have paying guests?⁵', and to ensure that it was widely communicated and accessible to the public. Many respondents also considered that

⁵ <https://www.gov.uk/government/publications/do-you-have-paying-guests>

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members of the public would simply not be aware whether the Fire Safety Order applied to their home or in what circumstances and questioned whether a property should ever be considered as a 'domestic' premises in the circumstances where it was only temporarily used as a domestic dwelling. Alternatively, it was suggested to clarify what domestic premises were exempt from the Fire Safety Order subject to their use for other purposes.

Section 5: Higher Risk Workplace Buildings and Fire Safety

Section 5 of the Call for Evidence sought views on Home Office research and the Fire Safety Order's current provisions in respect of higher-risk workplace buildings in the context of MHCLG's "Building a Safer Future" proposals for multi-occupied residential buildings of 18 metres or more⁶. This section linked to the "Building a Safer Future" consultation and discussed the specific issue of regulating fire safety risks in workplaces – when occupied – with higher rates of fire. We received 130 responses to this section of the Call for Evidence.

The Fire Safety Order and 'higher risk workplace buildings'

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?

Q43. From the building types that have higher fire rates, please select those that you consider to be 'higher risk workplace buildings' when occupied. [list in annex, multiple choice]

Q44. Are there any particular buildings within these broad categories that you are especially concerned about from a fire safety perspective?

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

Q46. 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': 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?

5.1 Respondents highlighted a wide variety of factors to determine whether a particular type of workplace was a higher-risk building. There was no lead proposition from the following range of factors:

- The type of occupancy of the building where the safety of occupants can be dependent on the assistance of others – for example, in health and social care;
- The capacity of a premises or the activities for which it is used, including the presence of dangerous substances or otherwise hazardous substances (for example, poisons, chemicals), due to the extent of hazard that could result from a fire incident – for example, entertainment venues and hospitals;
- More generally, the adequacy of fire safety precautions in place, including in relation to evacuation, with several respondents referring to 'stay put' advice; and

⁶ The "Building a Safer Future" consultation sought views on how the Government could provide clarity in the regulatory framework to ensure fire safety risks are managed holistically, and if both regimes (i.e., the Housing Act 2004 and the Fire Safety Order) should continue to apply, how they could be improved upon to complement each other. Both MHCLG's "Building a Safer Future" consultation and the Home Office's Call for Evidence sought views in relation to non-residential buildings where multiple people sleep, and what factors should be taken into account, including any particular types of buildings, when considering higher-risk workplaces.

- Building and construction standards, including material used and complexity of the premises, or specifications including height and layout.

5.2 Some respondents agreed with the proposed categories of higher-risk workplace buildings identified in the Call for Evidence (residential educational buildings, prisons, sheltered/supported housing and hospitals) with some respondents agreeing with one or more individual categories. The alternative categories most commonly submitted included: care homes; hotels or hostels; houses in multiple occupation; heritage buildings; chemical storage facilities; entertainment venues; and mixed-use buildings. No specific category was proposed by the majority of respondents.

5.3 Similarly, there was no consensus amongst respondents on the type of building that is of most concern in respect of fire safety. Sheltered or supported housing were most frequently mentioned, followed by hospitals, educational buildings, buildings where vulnerable occupants were present, and prisons. Many respondents also identified care homes as specific causes for concern.

5.4 Some respondents believed that the Fire Safety Order could provide the regulatory framework for sufficient fire safety in higher-risk workplace buildings. A specific concern related to the competence of the Responsible Person and fire risk assessors and other duty holders to respectively ensure the safety of occupants and high building standards. These respondents were likely to support tighter regulations for the competence of such individuals under the Fire Safety Order. Other areas of concern included whether the Fire Safety Order provided sufficiently stringent fire safety standards in higher risk workplaces, current gaps or inconsistencies in the supporting guidance, and the need for enhanced considerations in relation to the vulnerability of occupants in some higher risk workplaces.

5.5 A significant number of respondents provided views on potential alignments between the proposals made in MHCLG's "Building a Safer Future" consultation in relation to both the design and construction, and occupation phase, for premises under the Fire Safety Order, in particular higher-risk workplace buildings. The respondents who suggested the potential alignment were considering the duty of passing on information during each stage of a building's life cycle via a duty holder as well as incorporating a better way of handling and storing this information as proposed under the "Building a Safer Future" consultation. A common suggestion was in support of the 'Golden Thread of Information' recommendation made in the "Building a Safer Future: Independent Review of Building Regulations and Fire Safety"⁷, for information to be shared throughout the lifecycle of the building, from design through to occupation. Another suggestion supported adopting the requirement under Building Regulation 38 - that a person carrying out regulated building work must share fire safety information with the Responsible Person by no later than the date of completion of the work, or the date of occupation, whichever was the earliest.

⁷ <https://www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-final-report>

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?

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?

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?

5.6 The “Building a Safer Future” consultation set out proposals on the life cycle of a building from design and build to demolition, with a number of safeguards such as in relation to how information is passed along at each stage, how the information is stored and how the information is collected, and with the introduction of an Accountable Person. The consultation proposed the introduction of a Building Safety Regulator which would have oversight of certain types or categories of buildings on the first day the new regime is introduced and sought views on how the scope of the regime should be determined. As such, respondents have looked at ways that could improve fire safety in these types of buildings.

5.7 Many respondents were in favour of aspects of the proposals made in the “Building a Safer Future” consultation relating to fire safety being considered under the Fire Safety Order in relation to higher-risk workplace buildings in occupation. These included:

- alignment with the proposed role of an Accountable Person in respect of its interaction with Responsible Persons in the same building;
- compatibility between the proposed Building Safety Case and Fire Risk Assessment;
- adoption of the “Golden Thread” proposals to better manage fire safety information under the Fire Safety Order, especially to ensure that it was recorded and communicated digitally, and better enabled effective regulation and enforcement activity;
- sharing of fire safety information with all relevant persons and regulators; and,
- on-site availability of key information such as a copy of the evacuation strategy.

Enforcement and sanctions

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’?

5.8 Most respondents, especially regulators, thought stronger enforcement powers and a more comprehensive sanction regime, including Fixed Penalty Notices as an earlier form of response to low level non-compliance, should be considered. The views of the remainder were divided between the use of novel enabling provisions allowing enforcers to carry out their duties more effectively – for example, through the proposed requirements for an Accountable Person or the “Golden Thread” of Information approach as outlined in the “Building a Safer Future” consultation and the introduction of mandatory occurrence reporting as a set of measures to encourage compliance. Alternatively, there were further calls for additional clarity in the application of the Fire Safety Order in relation to higher-risk workplace buildings and for improvements to the supporting guidance to enable enforcing authorities to work more effectively. Respondents who rejected the consideration of the proposals made in the “Building a Safer Future” consultation for enforcement considered that the focus should be on further encouraging compliance with the Fire Safety Order under the existing framework, which most of them felt was sufficient but could be applied more effectively.

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’?

5.9 Some respondents proposed further alignment between the Fire Safety Order and the “Building a Safer Future” consultation proposals for the regulation of higher-risk workplace buildings. Suggestions made here included:

- improving communications between all the relevant parties on fire safety;
- introducing new legislation to improve fire safety procedures;
- raising the standard of competence of all personnel involved in fire safety, including fire sector professionals;
- creating a centralised fire safety information database for higher-risk workplace buildings; and
- introducing a fire risk testing regime to enhance fire safety protocols and procedures, for example the regular testing of evacuations procedures.

Next steps

The information gathered from this Call for Evidence will inform further 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. This includes the Fire Safety Bill, which will clarify that external wall systems and flat entrance doors are included in scope of the Fire Safety Order, and the Building Safety Bill which will set out the new regime for high rise residential buildings. The intention is to consult on proposals relating to the Fire Safety Order in spring 2020.

The Government's objective is to ensure that the Fire Safety Order continues to effectively regulate fire safety in all the premises subject to the Fire Safety Order as part of the ongoing considerations of the wider building safety landscape.

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>

Annexes

Annex A: List of representative respondent organisations

ENFORCING AUTHORITIES

Crown Premises Fire Safety Inspectorate; Health and Safety Executive; Local Government Association; Ministry of Defence Fire Safety Regulator; National Fire Chiefs Council (on behalf of Fire and Rescue Authorities, though these could also submit own responses: Avon; Avon and Somerset; Bedfordshire; Buckinghamshire; Cheshire; Cornwall; County Durham and Darlington; Cumbria; Devon and Somerset; Dorset and Wiltshire; East Sussex; Gloucestershire; Greater Manchester; Hampshire; Humberside; Lancashire; Leicestershire; Lincolnshire; Mid and West Wales; Norfolk; Northamptonshire; Northumberland; North Wales; Nottinghamshire; Oxfordshire; Royal Berkshire; Shropshire; South Yorkshire; Surrey; Warwickshire; West Midlands; West Sussex; West Yorkshire).

FIRE PROFESSION AND TRADE

Association for Specialist Fire Protection; European Fire Sprinkler Network; Fire and Security Association; Fire Brigades Union; Fire Industry Association; Fire Officers' Association; Fire Protection Association; Fire Sector Federation; Independent Fire Engineering & Distributors Association; Institution of Fire Engineers; Smoke Controls Association.

OTHER FIRE SAFETY INTERESTS

Local authorities providing housing and Building Control services (Brighton & Hove City Council; Calderdale MBC; Cambridge City Council; Cheltenham borough homes; City of Bradford Metropolitan District Council; East Riding of Yorkshire Council; Kirklees Council & Kirklees Neighbourhood Housing; Leeds City Council; London Borough of Hackney; London Borough of Hammersmith and Fulham; Mendip District Council; Nottingham Community Housing Association; Royal Borough of Kensington and Chelsea; Westminster City Council; Your homes Newcastle; Other property owners or service providers (Association of Inland Navigation Authorities; British Parking Association; British Property Federation; Clarion Housing Group; Cornwall Residence Landlords Association; Dorchester Alms Houses; Historic Royal Palaces; Holiday Home Association; Independent Park Home Advisory Service; Local Authority Officers Caravan Site Licensing Forum; London Housing Directors' Fire Safety Sub-Group; National Heritage / National Trust; National Housing Federation; National Landlords Association; Oyster Yachts; Peabody Trust; Places for People; Residential Landlords Association; Society Of London Theatre; South Lakes Housing; UK Hospitality; University of Warwick); Wider building design, construction, and health and safety organisations (Association of British Insurers; British Blind and Shutter Association; Chartered Institute of Environmental Health; Communication Workers Union; Construction Products Association; Guild of Architectural Ironmongers; Institute of Workplace and Facilities Management; Institution of Civil Engineers; Institution of Gas Engineers and Managers; Institution of Occupational Safety & Health; Mineral Wool Insulation Manufacturers' Association; National Education Union; National House-Building Council; Royal Institute of British Architects; Royal Institution of Chartered Surveyors; Trades Union Congress); Other public bodies (All-Party Parliamentary Fire Safety & Rescue Group; Care Quality Commission; Home Office; Independent Office for Police Conduct; HM Courts; Ministry of Justice; Office of Rail and Road)

Annex B: List of government guidance on the Fire Safety Order

Fire risk assessment guides:

1. [Fire safety risk assessment: theatres, cinemas and similar premises](#) - 8 June 2006
2. [Regulatory Reform \(Fire Safety\) Order 2005: a short guide to making your premises safe from fire](#) - 5 June 2006
3. [Fire safety risk assessment: 5-step checklist](#) - 5 June 2006
4. [Fire safety risk assessment: factories and warehouses](#) - 5 June 2006
5. [Fire safety risk assessment: large places of assembly](#) - 5 June 2006
6. [Fire safety risk assessment: small and medium places of assembly](#) - 5 June 2006
7. [Fire safety risk assessment: educational premises](#) - 5 June 2006
8. [Fire safety risk assessment: sleeping accommodation](#) - 13 December 2012
9. [Fire safety risk assessment: offices and shops](#) - 5 June 2006

Guidance notes:

- no.1: Enforcement: 23 October 2007 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15111/guidance1enforcement2005.pdf
- no.2: Secretary of State determination request process under art.36 for enforcing authorities and responsible persons: 01 November 2017 - [Regulatory Reform \(Fire Safety\) Order 2005: determination request process](#)
- no.3: Guidance to enforcers and operators to understand the Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009: 31 March 2009 - [Regulatory Reform \(Fire Safety\) Order 2005: fire safety on sub-surface railway stations](#)

Annex C: Glossary of terms

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

<p>Domestic premises</p>	<p>Private or residential dwellings, where people live, therefore excluding the parts used in common and other non-domestic parts of a building.</p> <p><u>Article 2. Interpretation:</u> “domestic premises” means premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling)</p>
<p>General fire precautions</p>	<p>Fire safety prevention and protection measures to reduce risks of fire and mitigate risks to life in the event of a fire.</p> <p><u>Article 4. Meaning of “general fire precautions”:</u> (1) In this Order “general fire precautions” in relation to premises means, subject to paragraph (2)— (a) measures to reduce the risk of fire on the premises and the risk of the spread of fire on the premises; (b) measures in relation to the means of escape from the premises; (c) measures for securing that, at all material times, the means of escape can be safely and effectively used; (d) measures in relation to the means for fighting fires on the premises; (e) measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises; and (f) measures in relation to the arrangements for action to be taken in the event of fire on the premises, including— (i) measures relating to the instruction and training of employees; and (ii) measures to mitigate the effects of the fire.</p> <p>(2) The precautions referred to in paragraph (1) do not include special, technical or organisational measures required to be taken or observed in any workplace in connection with the carrying on of any work process, where those measures — (a) are designed to prevent or reduce the likelihood of fire arising from such a work process or reduce its intensity; and (b) are required to be taken or observed to ensure compliance with any requirement of the relevant statutory provisions within the meaning given by section 53(1) of the Health and Safety at Work etc 1974.</p> <p>(3) In paragraph (2) “work process” means all aspects of work involving, or in connection with— (a) the use of plant or machinery; or</p>

	(b) the use or storage of any dangerous substance.
Relevant Persons	<p>Anyone lawfully on, or in the vicinity of, the premises – including employees, contractors or other persons as identified by the Responsible Person in a fire risk assessment.</p> <p><u>Article 2. Interpretation:</u> “relevant persons” means—</p> <p>(a) any person (including the responsible person) who is or may be lawfully on the premises; and</p> <p>(b) any person in the immediate vicinity of the premises who is at risk from a fire on the premises, but does not include a fire-fighter who is carrying out his duties in relation to a function of a fire and rescue authority under section 7, 8 or 9 of the Fire and Rescue Services Act 2004 (fire-fighting, road traffic accidents and other emergencies), other than in relation to a function under section 7(2)(d), 8(2)(d) or 9(3)(d) of that Act.</p>
Responsible Person	<p>A person who is responsible for fire safety and subject to statutory duties under the Fire Safety Order.</p> <p><u>Article 3. Meaning of “responsible person”:</u> In this Order “responsible person” means—</p> <p>(a) in relation to a workplace, the employer, if the workplace is to any extent under his control;</p> <p>(b) in relation to any premises not falling within paragraph (a)—</p> <p>(i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or</p> <p>(ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.</p>
Workplace	<p>Any premises or parts of premises used by someone or reserved for people to undertake work activities, not necessarily indoor.</p> <p><u>Article 2. Interpretation:</u> “workplace” means any premises or parts of premises, not being domestic premises, used for the purposes of an employer’s undertaking and which are made available to an employee of the employer as a place of work and includes—</p> <p>(a) any place within the premises to which such employee has access while at work; and</p> <p>(b) any room, lobby, corridor, staircase, road, or other place—</p> <p>(i) used as a means of access to or egress from that place of work; or</p> <p>(ii) where facilities are provided for use in connection with that place of work, other than a public road;</p>

Table 2. Definitions of terms used in the “Building a Safer Future” consultation

Accountable person	“The dutyholder during a building’s occupation. Under our proposals they would be the person who has control of the building, is legally responsible for the maintenance and who is entitled to receive funds from the residents for this. They would be responsible for ensuring fire and structural safety risks in the building are reduced so far as is reasonably practicable.”
Dutyholders	“The key roles (whether fulfilled by individuals or organisations) that are assigned specific responsibilities at particular phases of the building life cycle.”
Housing Health and Safety Rating System (HHSRS)	“A risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings.”
Safety case	“An evidence-based approach in which the dutyholder must demonstrate to the building safety regulator that life-critical risks within a given building are being proactively managed.”



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

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