

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

July 2019

About the Local Government Association

1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross-party organisation, which works on behalf of councils to ensure local government has a strong, credible voice with national government.
2. We aim to influence and set the political agenda on issues that matter most to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

General comments

3. We are not commenting on any feature other than the use of the FSO in relation to multi-occupancy high-rise buildings

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

4. We disagree with the scope of the Order
5. The application of the FSO to the common parts of high-rise multi-occupancy buildings has not been a success.
6. The coroner investigating the Lakanal House fire (2009) raised the uncertainty which she had identified over 'the scope of inspection for fire risk assessment purposes which should be undertaken in high-rise residential buildings' and 'evidence that indicated that inspection of the interior of flats or maisonettes in high rise buildings was necessary to enable an assessor to identify possible breaches of the compartment' in her letter to the relevant Secretary of State under rule 43.
7. The post-Grenfell uncertainty over whether cladding constitutes a common part (we assume that the Home Office is aware of the details of this issue) suggests this issue has not been resolved and has been a factor in the length of time it is taking to remediate ACM cladding.
8. We are also aware that a number of buildings have subsequently been discovered to have internal compartmentation issues unrelated to cladding. While the FSO has been effective in allowing fire services to take enforcement action in these cases, the existence of widespread problems with compartmentation suggests that the FSO has not been effective in terms of prevention.

9. The LGA believes it is essential that the regulation of fire and structural safety in high rise residential buildings is based on a holistic view of the building. This means that external cladding systems, balconies, fire doors and compartmentation issues within individual flats must all be covered by the same legislation as internal common parts.
10. This could be achieved by ensuring that all these elements are covered by the FSO or by taking residential buildings out of the FSO altogether and introducing new legislation that is specific to residential buildings. The second approach, which we favour, does raise the question of how mixed-use buildings should be regulated and we deal with that below.

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

11. We do not think the FSO enables a risk based approach in high-rise residential or mixed-use buildings because it does not facilitate a holistic view of the building

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 revised?**
12. We agree that the difficulties that have been experienced in addressing the safety issues with cladding (and others) since the Grenfell Tower fire have been caused by confusion over the interface between the Housing Act and the Fire Safety order (FSO).
 13. Historically the Fire Safety Order has been interpreted as only applying to communal areas inside buildings, thereby omitting not only cladding but implications for building-wide safety from activities inside flats that compromise compartmentation, be they barbeques on balconies, physical breaches of compartmentation (drilled holes etc.) or storage/hoarding of flammable materials).
 14. Meanwhile historically the Housing Act has tended to be applied as if it did not cover blocks of flats in which there are many separate dwellings.

15. Although enforcement efforts since the fire at Grenfell suggest that both pieces of legislation can be utilised to address issues around flammable cladding, the manner in which each has been used in practice has left flammable cladding on the side of tower blocks and other fire and structural issues effectively out of the scope of legislation. This is obvious from the fact that it has been necessary to revise the Housing Health and Safety Rating System (HHSRS) to ensure these hazards can be addressed and to establish the Joint Inspection Team to overcome the lack of experience in enforcing around this issue.
16. Any new legislation needs to be clear on which requirements apply to which parts of which buildings, and on the roles and responsibilities of different regulators.
17. We therefore propose that a new Building Safety Act should deal with fire and structural safety in **all** residential premises, with the exception of Houses in Multiple Occupation (HMOs). However, there would be greater scrutiny for certain prescribed buildings, e.g. the highest risk new and existing buildings would be subject to safety case requirements
18. This would have the following implications for the Fire Safety Order:
 - The Fire Safety Order will no longer apply to any residential buildings, including buildings where residential occupation is only one of several uses
 - The key principles of the FSO should be absorbed by the new Building Safety Act. This will ensure the FSO's approach to risk management still applies, and will allow fire and rescue services to continue to play an active role in the regulation of residential buildings during their occupation stage
 - The Fire Safety Order will continue for workplaces only as a stand-alone piece of legislation, as it still provides an adequate framework for these buildings
19. We think that too great a change to the Housing Act risks undermining the 15 years of successful safety enforcement in HMOs under this legislation. We therefore propose that the Housing Act remains in operation in respect of HMOs, and that the enforcement activity by local housing authorities that has been conducted under it since it was passed should continue as before.
20. For non-HMO buildings, changes need to be made to the assessment of risk associated with fire. The HHSRS risk assessment process is seriously flawed, in that - unlike the Fire Safety Order - it does not allow regulators to assume there will be a fire and then look at how its spread can be contained and escape provided. Instead, it requires the assessor to make its recommendations based on whether there have been fires in the past.
21. This creates a slow, onerous, and ultimately weak enforcement process, particularly in respect of large, multi-dwelling residential buildings. It also leads to contradictory conclusions being reached by environmental health officer using the Housing Act and FRS enforcement under the FSO. This issue must be considered in the review of the HHSRS.
22. Pending these changes, however, we have recommended that enforcement of fire safety in non-HMO buildings is brought into the new legislation, which should incorporate the principles of the Fire Safety Order. The Housing Act will also continue to apply to these buildings in respect of the other 28 hazards contained in the HHSRS, and there should be a Duty to Cooperate placed on the enforcement agencies working within

a given building. This will ensure that e.g. electrical safety issues with implications for fire safety can be reported by officers enforcing the Housing Act, to officers enforcing fire safety under the new legislation (i.e. the fire and rescue service).

23. One way to ensure that buildings of all heights are consistently regulated would be by making the new regime apply to all buildings through a new piece of legislation, as set out in our proposal above.
24. We propose that fire and rescue services (FRS) have primary responsibility for fire safety in all parts of all multi-occupancy buildings under this new legislation.
25. This would include any parts of the building used for non-residential purposes (shops, car parks etc.).
26. This approach will allow buildings – including mixed-use – to be regulated holistically. It would also ensure the FRS was well placed to advise on extending the more stringent requirements of the proposed new regime.
27. The FSO's approach to identifying a "responsible person" has, in practice, been difficult to enforce. We recommend that the definition of "accountable person" in the new legislation learns from these failings, and instead specifies that there is to be one accountable person for all parts of a building
28. The Housing Act should continue to apply in these buildings except in relation to fire hazards.
29. The exception to the above approach should be for HMOs, which are generally small enough that enforcement for all parts and all hazards, including fire safety, could be taken under the HHSRS, which is well-adapted for these types of buildings.
30. This should be supported by a legal duty to cooperate on local housing authorities and fire and rescue services, to ensure that relevant hazards such as electrical safety are dealt with holistically.
31. We would suggest learning from the better examples of joint working protocols between housing enforcement and fire and rescue enforcement (or indeed, police and fire and rescue), to understand how this duty to cooperate could be implemented
32. In relation to (iii) If the FSO were to continue to apply to common parts the definition would need to be altered to include external cladding systems and threats to compartmentation, including actions taken within individual flats.

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?

33. A single accountable person should be responsible for fire safety in all parts of a mixed-use, multi-occupancy building. This should be the freeholder. Where there is more than one freeholder, it should apply to them all equally with a duty to cooperate placed on each and every freeholder.

34. Where a building is mixed use and one use is residential it should be dealt with under the new legislation as far as structural issues and compartmentation are concerned. This is because fire does not distinguish between uses - the safety of residents in a mixed use building is dependent on the risk of fire in commercial parts of the building and on the successful operation of compartmentation. However, this does not mean that individual duty holders in businesses should be relieved of their responsibility for fire safety issues in the workplace. To give an example, the duty holder running a restaurant should be responsible under the FSO for fire safety in the same way that they would if this was a single-use premises, but the freeholder should be responsible for ensuring that any fire in the restaurant does not spread beyond the compartment or obstruct residents' means of escape.
35. Currently, the remit of the Housing Act in these buildings is over residential parts, and the FSO has jurisdiction over commercial parts and any common areas between the two. In the absence of common parts, the FSO will also have jurisdiction over more parts of the building if compartmentation between the residential and commercial parts is breached.
36. However, this arrangement does not work well in practice – firstly, it is not always possible to tell whether compartmentation is breached. Secondly, the RRO does not always allow fire safety breaches in the commercial parts of a building to be addressed, if there are not enough people occupying those commercial parts – this leaves occupiers of all parts of the building vulnerable to fire safety issues
37. Fundamentally, the current arrangement does not allow for a building to be looked at holistically. Our proposal set out above would address these issues

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

Please explain.

38. We are aware that our members have experienced difficulties in establishing the responsible people in relation to the remediation of dangerous cladding on high rise buildings. The NFCC and MHCLG can provide details of these issues. We have not been able to keep a record of individual cases as neither we nor our members have the resources and we are aware that MHCLG has been collecting information
39. The FSO's approach to identifying a "responsible person" has, in practice, been difficult to enforce. We recommend that the definition of "responsible person" in the FSO is amended to align with the definition of "accountable person" to be brought in under the new regime for highest-risk buildings, and that there should be one accountable person for all parts of a building