



Fire Protection
Association



LEGISLATIVE CHANGES

Housing Law Practitioners Association

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AGENDA

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| 3 | Fire Safety Act 2021 |
| 4 | Fire Safety (England) Regulations 2022 |
| 5 | The Higher-Risk Buildings (Key Building Information etc.)(England) Regulations 2023 |
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01

OVERVIEW

DIRECTION OF TRAVEL

Before Grenfell

- Building Regulations
- Regulatory Reform (Fire Safety) Order 2005
- Product testing to support



After Grenfell

- Building a Safer Future report
- Industry Response
- Setting and Raising the Bar reports
- Amendments to the Building Regulations 2010 and Approved Documents
- Competence standards and / Publicly Available Specifications (PAS)
- Fire Safety Act 2021
- Building Safety Act 2022 (which amends other legislation including the Regulatory Reform (Fire Safety) Order 2005)
- Building Safety Regulator (BSR)
- National Construction Products Regulator (NRCP)
- New Homes Ombudsman
- Defective Premises Act 1972 - amended
- Town & Country Planning Act - amended
- Architects Act 1997- amended
- Fire Safety (England) Regulations 2022

“The reality is that the forthcoming building safety regime applies in general to nearly all activity covered by building regulations. The often publicised and substantial requirements for higher risk premises are on top of the general requirements”

Paul Reeve

Director of Corporate Social Responsibility at ECA





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02 BUILDING SAFETY ACT 2022

BUILDING SAFETY REGULATOR – HSE

BSR will have 3 main functions:

- overseeing the safety and standards of **all buildings**
- helping and encouraging the built environment industry and building control professionals to improve their **competence**
- leading implementation of the new regulatory framework for **high-rise buildings**

Buildings 'in scope'

- High-rise buildings.
- These are buildings with 7 or more storeys or that are 18 metres or higher, and either:
 - have at least 2 residential units
 - are hospitals or care homes (during design and construction phases only)
- **Additional** requirements for buildings ≥ 5 storeys or $\geq 11\text{m}$

There will also be **registers** of:

- occupied high-rise buildings
- building inspectors and building control approvers

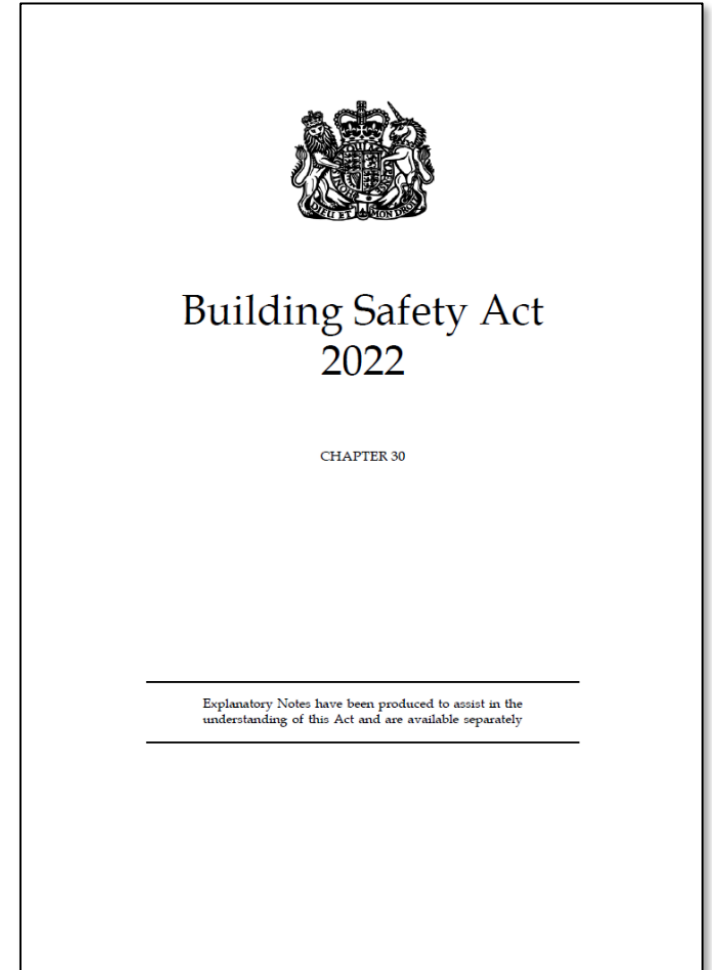
The new framework

The building safety reforms introduce a new regulatory framework for high-rise buildings. These include:

- HSE is a **statutory consultee for planning** applications
- BSR will become the **building control authority** for high-rise buildings
- decision points during design and construction – **Gateways**
- Requirement for **safety cases** (fire strategies)
- giving **dutyholders** clear accountability and statutory responsibilities as buildings are designed, built, refurbished and occupied
- a **golden thread** of building information – identified, stored and updated throughout the building's life cycle
- **mandatory reporting** of prescribed fire and structural safety occurrences to BSR

RELEVANT BUILDINGS

- Buildings that are at least **18m** in height or have at least **7 storeys** and at least 2 residential units.
- Buildings that are at least **11m** in height or have at least **5 storeys** and at least 2 residential units.
- Additional requirements implemented in relation to:
 - Remediation responsibilities and charges
 - Provision of information
 - Report on certain building safety matters
 - Stairs and ramps
 - Emergency egress arrangements for disabled persons
 - Automatic water fire suppression systems



NEW ROLES – ACCOUNTABLE PERSON & PRINCIPAL ACCOUNTABLE PERSON

Accountable person (AP)

- The equivalent of a “dutyholder” during the design and construction phase

Who/What

- For residential high-rise buildings the AP will be the organisation or person who owns or has responsibility for the building.
- They may also be the organisation responsible for maintaining the common parts of a building (e.g., corridors, staircases, lobbies etc.)
- The AP will have a **duty** to take all reasonable steps to:
 - Prevent risks to building safety – ‘spread of fire and/or structural failure’
 - reduce the seriousness of an incident if one happens

Principal Accountable Person (PAP)

- In circumstances where there is more than one AP the AP responsible for the **structure and exterior** of the building will be the principal accountable person. Where there is only one AP – they will be the PAP.
- As well as their duties as an AP, PAPs must:
 - register existing buildings with the Building Safety Regulator (BSR) – between April 23 and October 23
 - register all new buildings before occupation
 - prepare a **safety case report** for the building. This should show that:
 - APs have assessed all building safety risks
 - taken all reasonable steps to control them
 - give the safety case report to BSR on request
 - apply for a **building assessment certificate** when directed by BSR
 - prepare a **Residents’ Engagement Strategy**
 - undertake **Mandatory Occurrence Reporting**

VARYING RESPONSIBILITIES



Accountable Person

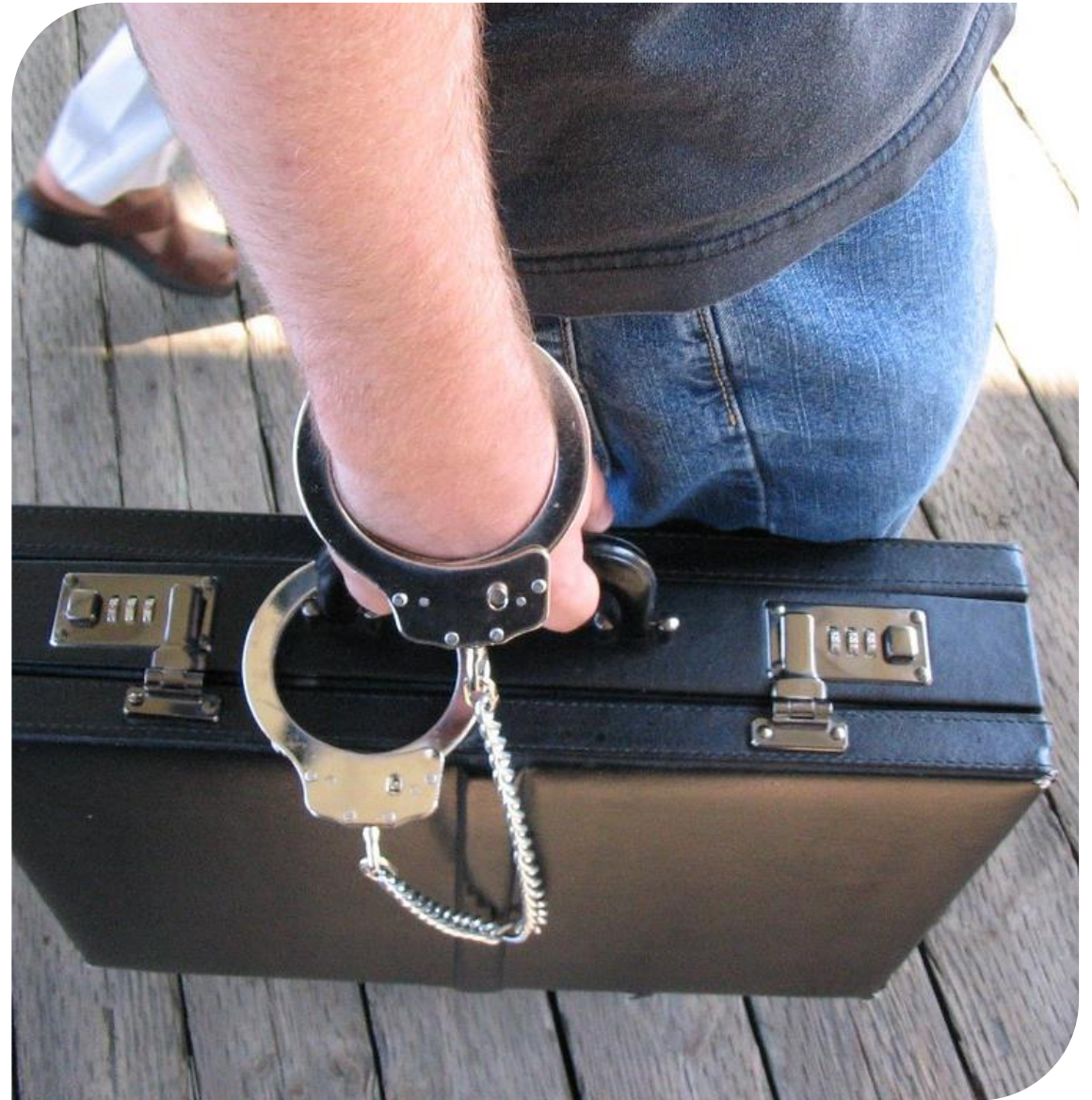
- For occupied higher-risk buildings, the AP will have a legal estate in possession of the property – in most cases, the freeholder(s) – or will be under a relevant repairing obligation for any of the common parts – as lessees of the property. They could be an individual, a partnership or a corporate body.
- An AP for a higher-risk building may also be a RP, as defined in the FSO.

Responsible Person

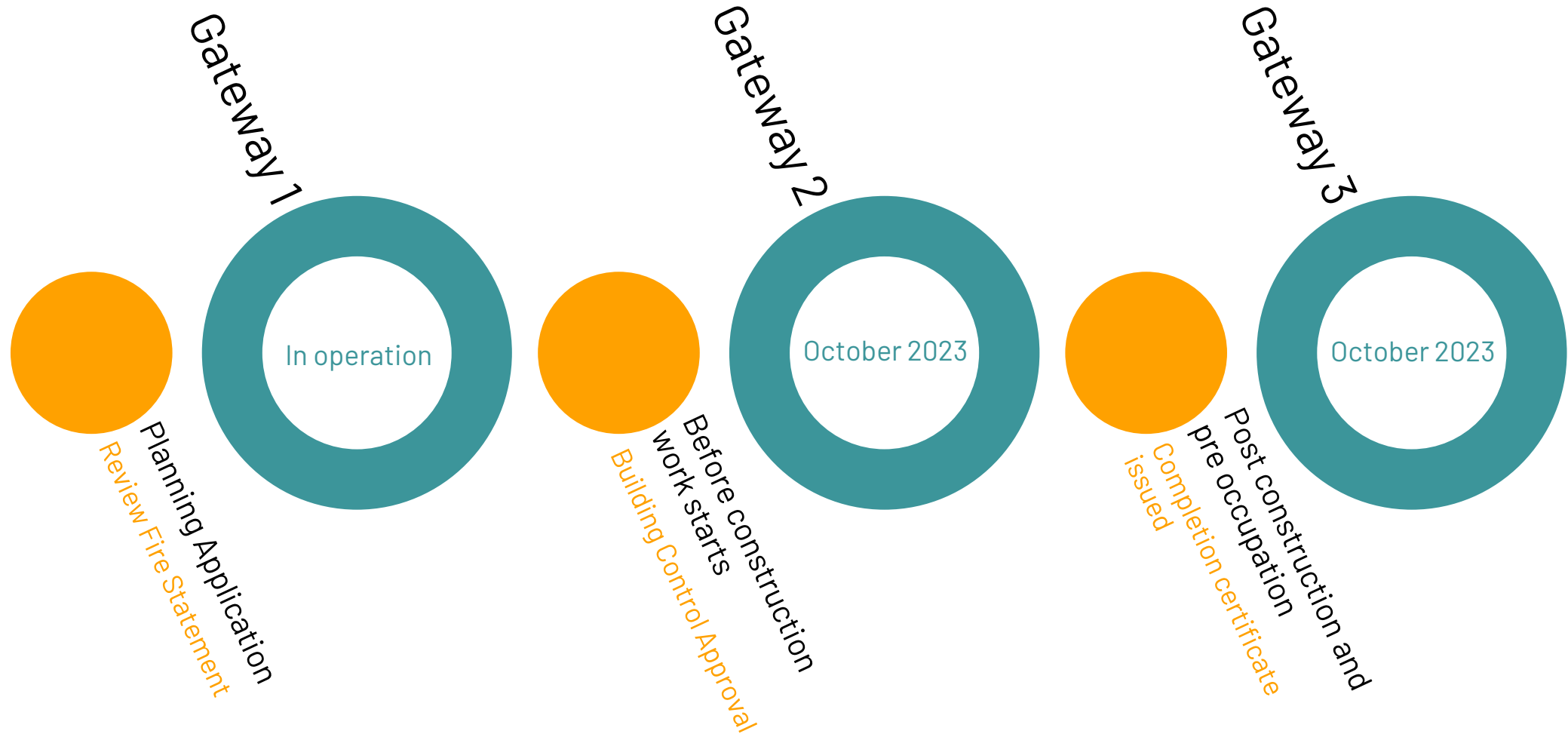
- The RP is a person responsible for ensuring their own safety and the safety of others from fire risks in Regulatory Reform (Fire Safety) Order 2005 (FSO) regulated premises. This is normally a building owner, an employer, or any other person in control of the premises.
- In a higher-risk building the RP may also be an AP, as defined in the BSA.

SAFETY CASE

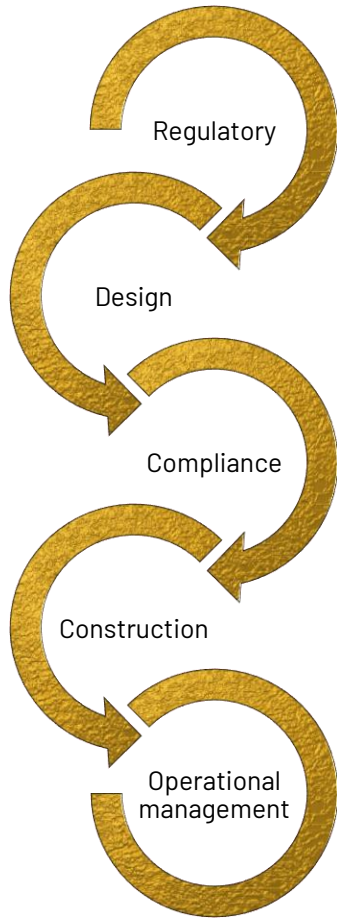
- As part of the new regime, those who manage 'in scope' buildings will need to prepare a **safety case** to demonstrate that their building is **safe from the risks of fire spread or structural collapse**. A safety case report must then be prepared for submission to the new Building Safety Regulator on request.
- The safety case will be required to demonstrate: -
 - the **risks** to building safety are being **managed appropriately and proportionately** for each building, rather than assuming that following guidance or prescriptive standards will result in safe outcomes
 - Accountable Persons deliver a **continuous** preventative and proactive approach to **managing building safety risks**



GATEWAYS

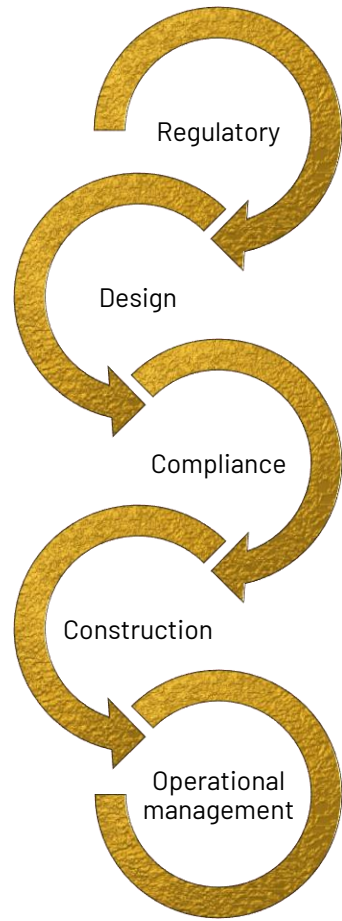


GOLDEN THREAD



- Change to control the process and associated record-keeping requirements, linking to the recommendation for a digital record for every building: a 'golden thread of information'
- Will include information covering regulatory, design, compliance, construction and operational management functions
- Dutyholders must also:
 - Hold, transfer and update information throughout the life cycle of the building
- Information from this record must be available to the Regulator if requested

GOLDEN THREAD – EXISTING BUILDINGS



Apply for a Building Assessment Certificate

Provide the following information: –

- Assessment of building safety risks
- Management of building safety risks
- Safety case report
- Mandatory occurrence reporting
- Provision of information to regulator and residents
- Residents engagement strategy

Regulation 83 (3)

“Where an accountable person does not hold prescribed information or a copy of a prescribed document, they must obtain it except where it is not practicable to do so.”

AMENDMENTS TO THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005 – FIRE SAFETY CLAUSE 156

- Coming into force on 1st October 2023
- Applies to all premises which fall under the auspices of the Order
- Responsible Persons (RP) for all regulated premises to:
 - Record their fire risk assessment **in full** (not just the significant findings)
 - **Record the identity** of any person appointed by the RP to assist them with making or reviewing an assessment
 - **Record** their fire safety arrangements
 - Take reasonable steps to ascertain whether there are any other RPs that share or have duties in respect of the premises and **cooperate** with accountable persons
 - Provide relevant fire safety information to a new RP
- Ensure that they **do not** appoint a person to assist them in making or reviewing a fire risk assessment **unless** the person is **competent**



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03 FIRE SAFETY ACT 2021

FIRE SAFETY ACT 2021

- Commenced on 22 May 2022
- In circumstances where a building contains **two or more sets of domestic premises** the Regulatory Reform (Fire Safety) Order 2005 **applies**.
- The fire risk assessment undertaken on such buildings must consider: –
 - the building's structure and external walls and any common parts which includes: –
 - **doors or windows** in those walls
 - anything attached to the exterior – including **balconies**
 - **all doors** between the domestic premises and common parts
- Introduced the Fire Risk Prioritisation Tool

It has to be recognised however, that the vast majority of fire risk assessors, may not be competent to make an assessment of the external wall system

AMENDMENTS

Application to premises

6.—(1) This Order does not apply in relation to —

- (a) domestic premises, except to the extent mentioned in **paragraph (1A) or** article 31(10);
- (b) an offshore installation within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995(**a**);
- (c) a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;
- (d) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings;
- (e) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994(**b**) or a vehicle exempted from duty under that Act;
- (f) a mine within the meaning of section 180 of the Mines and Quarries Act 1954(**c**), other than any building on the surface at a mine;
- (g) a borehole site to which the Borehole Sites and Operations Regulations 1995(**d**) apply.

(1A) Where a building contains two or more sets of domestic premises, the things to which this order applies include—

- (a) the building's structure and external walls and any common parts;
- (b) all doors between the domestic premises and common parts (so far as not falling within sub-paragraph (a)).

(1B) The reference to external walls includes—

- (a) doors or windows in those walls, and
- (b) anything attached to the exterior of those walls (including balconies)."

(2) Subject to the preceding **paragraph provisions** of this article, this Order applies in relation to any premises.

FIRE RISK ASSESSMENT PRIORITISATION TOOL

Extract from the Fire Safety Act 2021

Risk based guidance about the discharge of duties under the Fire Safety Order

(1) Article 50 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541)(guidance) is amended as follows.

(2) After paragraph (1) insert—

“(1A) Where in any proceedings it is alleged that a person has contravened a provision of articles 8 to 22 or of regulations made under article 24 in relation to a relevant building (or part of the building)—

- (a) proof of a failure to comply with any applicable risk based guidance may be relied on as tending to establish that there was such a contravention, and
- (b) proof of compliance with any applicable risk based guidance may be relied on as tending to establish that there was no such contravention.”



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04 FIRE SAFETY (ENGLAND) REGULATIONS 2022

FIRE SAFETY (ENGLAND) REGULATIONS 2022

- Came into force 23 January 2023
- Introduces requirements in relation to.....
 - Provision of **secure information boxes** (SIB) and specified information maintained
 - Information on design and **materials of external walls**
 - Provide **floor plans** and building plans showing key information
 - **Checks** on lifts and fire fighting equipment
 - Clear floor and flat identification – **way finding signs**
 - Produce an **evacuation plan** and review
 - Post prominently information to residents
 - **Fire doors**..... Guidance for residents and fire door checks – quarterly checks on all communal fire doors and annual checks on flat entrance doors
 - Provision of **information to fire and rescue service** – including where facilities are impaired
- Personal emergency evacuation plans (PEEPs) – included in earlier drafts but subsequently removed – but once again on the agenda

DIFFERING REQUIREMENTS

In **all** multi-occupied residential buildings, responsible persons must: -

- Provide residents with relevant fire safety instructions and information about the importance of fire doors

For **multi-occupied residential buildings** (2 or more domestic premises) **over 11 metres**, responsible persons must: -

- Undertake quarterly checks on all communal fire doors and annual checks on flat entrance doors (best endeavours)

For high-rise residential buildings (a multi-occupied residential building **at least 18 metres** or 7 or more storeys), the responsible persons must:

- share electronically with their local fire and rescue service (FRS) information about the building's external wall system
- Provide the FRS with electronic copies of floor plans and building plans for the building
- Keep hard copies of the building's floor plans, in addition to a single page orientation plan of the building, and the name and UK contact details of the responsible person in a secure information box accessible by firefighters
- Install wayfinding signage which is visible in low light conditions
- establish a minimum of monthly checks on lifts for the use of firefighters and on essential pieces of firefighting equipment
- inform the FRS if a lift used by firefighters or one of the pieces of firefighting equipment is out of order for longer than 24 hours.



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05

THE HIGHER-RISK BUILDINGS (KEY BUILDING INFORMATION ETC.)(ENGLAND) REGULATIONS 2023

THE HIGHER-RISK BUILDINGS (KEY BUILDING INFORMATION ETC.) (ENGLAND) REGULATIONS 2023

- Came into force on 6th April 2023.
- Extend to England and Wales and apply to England only.
- They specify key building information that must be provided to the Building Safety Regulator about higher-risk buildings as required by section 89 of the Building Safety Act 2022 – *89 Provision of information etc to the regulator, residents and other persons*
- They also set out provisions regarding the parts of a higher-risk building for which an accountable person, as defined by section 72 of the Act (complex definition), is responsible for in relation to their duties under Part 4 of the Building Safety Act – *4 Duty to facilitate building safety: higher-risk buildings*
- Regulations 3 to 18 specify the information required. This includes information about potential risk factors including: use, change of use, the external wall system, the structural design type of the building, the number of storeys and staircases, energy supplies, the evacuation strategy for the building, and whether it is attached to any other building.

OTHER ASPECTS

- Introduce a requirement for the principal accountable person (PAP) to submit information to the regulator in electronic format
- When the information should be submitted (within 28 days of application for registration of the building)
- Describes which parts of a HRB an AP is responsible for (i.e. who needs to comply with Part 4 duties) for each part of the building)
- Commonhold, legal estate, relevant repairing obligation – requirements on the AP may differ
- Arrangements where there are multiple responsible persons (balconies, residential/ commonhold units and parts of the building to which the Fire Safety Order does not apply)
- Arrangements where there is a single accountable person
- Where the accountable person has no control over a residential unit – either it is a commonhold unit or a flat held on a long lease, it will only be responsible for mitigating or preventing building safety risks within the flat in so far as they impact on the common parts and other flats.
- To ensure that there is always an accountable person responsible for all residential parts of a building, so that there is an appropriate person to meet the duties for that part under Part 4. If the lessor of a flat is not an accountable person, regulation 30 (2)(b) makes the accountable person for the common parts which adjoins the front door of the flat responsible for it in relation to the Part 4 duties.

OTHER NEW LEGISLATION

The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023

- Came into force on 6 April 2023 and place responsibilities on the principal accountable person for higher-risk buildings
- From 1 October 2023, it will be an offence for occupied higher-risk buildings not to be registered with the BSR

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023

- Came into force on 6 April 2023 and specify descriptions of buildings included in the definition of 'higher risk building' in the Building Act 1984 and the Building Safety Act 2022

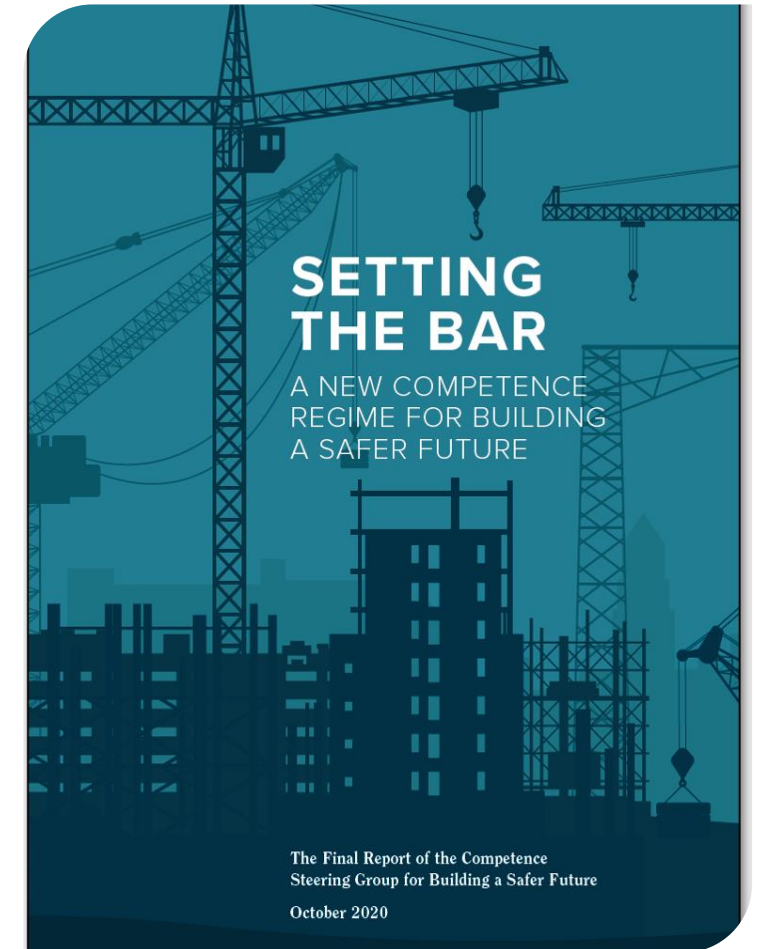


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06 CONCLUSIONS

ARGUMENT

- Hard to argue that many of these initiatives will not be of significant benefit more widely to premises <11m high
- But may lead to a two, potentially three tier regulatory landscape
- Appreciate there needs to be a 'proportionate' approach
- EXAMPLE - Fire Risk Assessor Competency
 - Work undertaken through WG4 and FSF recognises different levels of experience and competency in broad terms – IFSM Tier 3 – Complex buildings
 - A similar approach may be required elsewhere





ARGUMENT

- But should our decision making not be focused more on risk to occupants than building height?
- Person centred risk assessments – already a common feature for at-risk residents
- Vulnerability of residents
- Disadvantaged communities



Twitter @benaustwickart - Martin Godwin/The Guardian

CONVERTED PREMISES

- Former offices or warehouses
 - Meet requirements of Regulatory Reform (Fire Safety) Order 2005 originally
 - Impacts on evacuation strategy – stay put, simultaneous, phased
 - Limitations potentially include
 - Core – stair dimensions and capacities
 - Compartmentation standards
- Regardless of the suitability of wider environment

MEMBERSHIP BENEFITS

- Member Directory - **New**
- Educational Case Studies - **New**
- Member Insights - **New**
- Mini Guides- **New**
- Member Marketing Toolkit - **New**
- Weekly News Round Up - **New**
- Online job board - **New**
- Partner benefits - **New**
- Fire & Risk Management Journal
- Access to our topical webinar library
- Ask the Expert
- Document Library including all FPA publications
- CPD Record Tool
- Monthly newsletter
- Member savings
- Assembly Point Podcast
- Toolkits





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