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The professional voice of the  
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31<sup>st</sup> July 2019

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

To the Home Office,

Please find attached the National Fire Chiefs Council (NFCC) response to the consultation paper '*The Regulatory Reform (Fire Safety) Order 2005 Call for Evidence.*'

NFCC is the professional voice of the UK fire and rescue services (FRS) and is comprised of a council of UK Chief Fire Officers. This submission was put together by NFCC's Building Safety Programme (BSP) Team, following extensive consultation across UK FRSs, and was overseen by the NFCC Protection and Business Safety Committee. Our engagement strategy for developing responses to this consultation (and the MHCLG's consultation *Building a Safer Future*), has followed a three-step process:

1. Early in 2019, NFCC held two workshops in London and Manchester focused on key themes in Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, which were attended by 43 FRS. The feedback gathered at these workshops informed the development of draft positions on key areas of FRS interest.
2. Throughout June and July, the BSP Team circulated draft positions to all FRS. The team discussed these and other themes with FRS at regional Protection Network meetings and many one-on-one engagement sessions with individual FRSs. Position statements and briefings were sent to all the NFCC Committees and Chief

Fire Officers. The team presented to other NFCC Committees and forums where timeframes allowed, including the NFCC Operations Committee, Sector Resources Committee, and the Fire Engineering Technical Standards (FETS) Group. A bespoke briefing on the BSP Team's involvement in the review of competency frameworks was also sent to NFCC Workforce Committee.

3. The feedback collected at these engagement meetings was then used to inform final draft answers, which were then made available for all FRS to comment on.

Through this process, NFCC has engaged all FRSs in England and Wales, except the self-governing crown dependencies. Specific engagement took place with the Scottish FRS to exchange learning and ideas. Colleagues from Northern Ireland FRS were invited to speak with the team, and are engaged as part of the NFCC Protection and Business Safety Committee. The team has also met with the Ministry of Defence FRS, and the Crown Premises Fire Safety Inspectorate as part of the consultation process, and as part of the working group set up to review NFCC's Competency framework for Business Fire Safety Regulators.

The evidence collected by NFCC suggested that, generally, they believe the Regulatory Reform (Fire Safety) Order 2005 (FSO) is an adequate piece of legislation. However, 13 years of operation has identified some flaws. There are a range of areas where FRSs believe the FSO could be strengthened and improved. These are set out further in our full response.

However, a lack of detail within the accompanying consultation proposals in *Building a Safer Future* has made it difficult to respond to some questions. A key aspect is interaction of the Housing Act 2004 and the FSO, where it is not clear what the Government's vision is for the role of FRSs, particularly with regards to low-rise residential buildings. We would welcome further discussions in this regard.

FRSs have raised concerns with us about the eight-week window for response. The general view is that, for consultations of this significance, eight weeks (inclusive of school holidays) is insufficient to allow proper engagement. Some FRS consider that the proposals do not meet HM Government's *Code of Practice on Consultation*<sup>1</sup>, with respect not only to the 12 week standard window, but also with regards to the lack of clarity on key aspects, and the lack of an impact assessment.

A lack of detail about the form of the proposed national regulator has made it difficult to respond to some questions. NFCC supports proposals for national coordination of a number of the functions proposed but is of the view that this should be supported by local delivery through existing regulators.

**It is crucial, in order to avoid creation of a two-tier standard of safety, that the right incentives are in place to ensure compliance, and a focus on safety.**

In line with previous responses, we would like a system that is able to incorporate a more holistic understanding of risk factors, including the **vulnerability of building**

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100807/file47158.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf)

**occupants.** A wider range of buildings should be brought into scope of MHCLG's proposals for the planning, construction and design side of the new regime to ensure these buildings are built correctly to begin with. This should include Care Homes, Specialised Housing, Hospitals and Prisons.

There is significant scope for 'gaming' hard parameters such as trigger heights, and aspects such as how buildings are measured. Currently, there is an anomaly for protection of buildings between 11m and 18m. Front line equipment carried by FRS is primarily fit for external firefighting and rescue up to 11m in floor height.

**If a height threshold must be used, then we suggest 11m may be more appropriate than 18m.** This is covered in more detail in our answers to MHCLG's consultation.

The HMICFRS are reporting that protection work was under-resourced in many of the FRSs inspected and that budget reductions have disproportionately fallen on protection teams.<sup>2</sup> Any additional burdens must be properly resourced, and there needs to be sufficient transitional arrangements to train, recruit and upskill staff.

There are concerns a national regulator would strip FRS of key specialist staff who are already difficult to recruit and retain and take a long time to train. NFCC suggest that this risk can be mitigated by the regulator considering establishing a small central team utilising secondment agreements to transition and upskill staff.

We trust the attached submission is helpful and welcome further discussions following the outcome of the consultation.

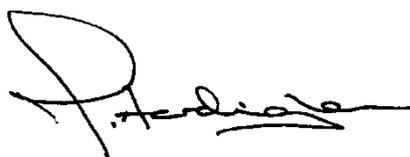
Yours sincerely,

**Roy Wilsher**



**Chair, National Fire Chiefs Council**

**Mark Hardingham**



**NFCC Protection and Business Safety  
Committee Chair**

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<sup>2</sup> <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19.pdf>  
<https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19-tranche-2.pdf>

# Executive summary

A lack of detail within the proposals in *Building a Safer Future* which reads alongside this Call for Evidence has made it difficult to respond to some questions.

## A broken system

### A holistic vision for fire safety?

*Interface of the Housing Act 2004 and Regulatory Reform (Fire Safety) Order 2005*

NFCC is unclear what the Home Office's vision is for the future role of FRS in building safety, in particular how fire safety in low-rise blocks of flats will in future be regulated.

No vision is presented on how the Housing Act and FSO would be amended to improve the interface of the legislation; a key issue highlighted in the past by the Coroner following the Lakanal House fire in 2009, and again by Dame Judith Hackitt.

The proposals suggest that for buildings below 18m, safety will be addressed through the review of the Housing Health and Safety Rating System (HHSRS) and the full technical review of Approved Document B (ADB). We note that all four consultations have key interdependencies but are running to different timescales.

FRSs have identified significant risks which could be associated with possibly being removed from fire safety regulation of low-rise residential buildings:

- In mixed-use buildings, there could still be overlap issues in the common parts over which instrument would take primacy (the FSO or HHSRS). NFCC believe that if a height threshold is used then there should be a single regime for mixed buildings. This would avoid people 'gaming' the system by designing commercial use as well as residential in a building to avoid the stricter Gateway process for one over the other.
- Fewer opportunities for FRS to undertake Prevention work, as Protection officers would no longer be going into these buildings; this could lead to an increase in fires and deaths.
- Most fire deaths happen in dwellings. Removing FRS would mean they would not have any enforcement powers in residential buildings.
- Because fire and rescue authorities would no longer be an enforcing authority according to Article 45 of the FSO, developers would no longer have a duty to consult with fire authorities at building control stage. This could lead to buildings being built within communities that the FRS are unaware of.

- Reductions in funding for FRS has meant the balance of funding and resources allocated to their protection, prevention and response functions has been further strained. In their recent inspections HMICFRS have concluded that protection functions are often under-resourced. Fire safety, if forced to compete with the wider remit of pressures that exist for instance within local authorities, could be deprioritised and lead to a 'race to the bottom'.
- FRS may be asked for fire safety advice in residential buildings by other regulators due to a lack of expertise to deal effectively with fire safety issues. Such advice would come without any funding; simultaneously, a refusal to provide the advice would also create risks for both the FRS and residents.
- A gap could be created for FRS in the alignment of protection and response functions. It may be difficult to influence operational considerations into the safety of low-rise buildings. FRS could lose the link of passing on key risk information to operational crews and result in less knowledge about the built environment.
- The public trust FRS to deal with fire safety matters. If fire safety in these buildings was given to another authority it is likely complaints and enquiries would still come to FRS.
- FRS have a clear priority to protect the public from fire. FRS take unbiased action which based on securing public safety.
- Dame Judith Hackitt diagnosed 'conflicts of interest' as a symptom of a broken system. If one public body, such as a local authority, provides planning, enforces the planning, provides building control, in some cases owns the buildings, and then enforces the standards thereafter, and one part of this system fails, what is the remedy for the public?

NFCC would welcome further discussions with the Home Office on the scope of the FSO and how it will apply alongside the proposed new regime.

#### *Proposed national regulator*

Many of the proposals in *Building a Safer Future* rely on an assumption that the proposed national regulator would integrate people with the right building control and fire safety skills and knowledge at the right points in the process. This relies on an understanding of how the regulator would be governed, structured and staffed, which at this stage has not been presented.

In regard to the above points, NFCC has found it a difficult to understand the vision for the new regime in the round, and difficult to respond to some questions.

NFCC supports proposals for national coordination of a number of the functions proposed but is of the view that this should be supported by local delivery through existing regulators.

## Clarification and strengthening of the FSO

The evidence collected by NFCC at our workshops and subsequent follow up meetings suggested that, generally, FRS believe the FSO is an adequate piece of legislation. However, 13 years of operation has identified some flaws. There are a range of areas where FRS believe the FSO could be strengthened and improved. These include:

- Current enforcement and sanctions need reviewing to ensure that they are sufficiently robust to deter poor behaviours.
- Supporting guidance is severely out of date and incorrect in places.
- Under Article 38 FRS do not have powers to require firefighting facilities being installed where they have not been included at initial design and construction stage. This is discussed further below.
- Articles 3 and 5 do not ensure that Responsible Persons can be easily identified and held to account.
- Article 27 needs strengthening to ensure appropriate powers of inspectors.
- Article 4 (the meaning of “general fire precautions”) and article 8 (outlining the duty to take general fire precautions) need review to ensure compartmentation issues can be appropriately addressed under the FSO.

These areas of concern are discussed further in our responses.

***The FSO is based on the principle of buildings being built correctly. This has left FRSs without powers to address critical safety failings within buildings, particularly with regards to firefighting facilities.***

### Life safety vs property protection

Whilst NFCC appreciate the current intention of the regime is primarily life safety, further emphasis on environmental impacts and property protection could have significant additional benefits for communities and the safety of firefighters.

We recommend that government consider whether there are opportunities within the full technical review of supporting design guidance to improve property protection, particularly for key community assets such as schools and heritage buildings.

### Non-worsening provisions versus continuous improvement

There remains a fundamental disconnect between the non-worsening conditions of Building Regulations, and the expectations of continuous improvement through the fire risk assessment process set by the FSO.

Regulation 4(3) of the Building Regulations 2010 states that where the work did not previously comply with Schedule 1 that when the new work is complete it should be no more unsatisfactory in relation to that requirement than before the work was carried out.

This is interpreted as allowing fire precautions to be removed and replaced on a like-for-like basis – meaning a building can be refurbished many times but the general fire precautions may never get improved to modern standards. This runs contrary to the principles of prevention outlined in the FSO, that premises risk assessments should adapt to technical progress and reduce overall risk within buildings.

Non-worsening provisions are resulting in lost opportunities to improve building safety. This requires a practical solution. A good case study of this is the total refurbishment of Lakanal House following a multiple fatal fire, which overlooked opportunities to improve the fire safety for the building, despite significant investment in the refurbishment works.

Article 38 of the FSO, provides that fire authorities can require firefighting facilities to be maintained, but have no powers to require them to be installed where they have not been included in the first instance. If FRS requirements are missed during construction, fire authorities have no ability to require improvements to address this.

***NFCC recommend the Government:***

- ***Introduce trigger provisions to require improvements to fire safety standards to comply ‘as nearly as is reasonably practicable’ with current building guidance when major refurbishments are undertaken. Examples exist in other jurisdictions<sup>3</sup>.***
- ***Provide powers for FRSs to seek improvements in FRS access and facilities throughout the life of a building.***

***Guidance for responsible persons for the FSO should emphasise the requirement to look to improve safety to comply ‘as nearly as is reasonably practicable’ with current standards within an existing building when carrying out building work.***

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<sup>3</sup> Such as sections 112 and 115 of the New Zealand Building Act 2004. Determinations on how this test is applied can be searched at <https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>

## Supporting guidance

**Supporting guidance requires a coordinated approach and a regular review period.**

Article 50 guidance is out of date and successive departments have refused NFCC/CFOA requests and offers of assistance to review them.

All the specific guides should be withdrawn and replaced with a general guide for workplaces and one for housing. Other specialist guides should be produced by the new regulator and others given Government assurance under Article 50, for example:

- *Guidance on fire safety provisions for certain types of existing housing*<sup>4</sup> produced by the Local Authorities Coordinators of Regulatory Services (LACORS);
- *Fire Safety in Specialised Housing*<sup>5</sup> produced by NFCC;
- *Fire Safety in Purpose Built Blocks of Flats*, produced by the Local Government Association.

NFCC notes in respect of the latter, that this guidance was previously deemed as fulfilling duties under Article 50 in a letter<sup>6</sup> from the Secretary of State for Communities and Local Government.

All guidance should be subject to regular review every three years.

Further support is then needed to encourage a register of competent fire risk assessors that will ensure competent people will carry out fire risk assessments in the more complex premises. These individuals should be able to understand risk and benchmark against current standards. This will allow Responsible Persons to choose the correct person for the role.

Following the NFCC recent and extensive consultation with FRS, we have many specific examples and are willing to offer support and expertise to help determine future guidance

***We want to see coordinated guidance, with a regular review period that should be no more than three years between reviews.***

<sup>4</sup> <https://www.gov.uk/government/collections/fire-safety-law-and-guidance-documents-for-business>

<sup>5</sup> [https://www.nationalfirechiefs.org.uk/write/MediaUploads/NFCC%20Guidance%20publications/NFCC\\_Specialised\\_Housing\\_Guidance\\_-\\_Copy.pdf](https://www.nationalfirechiefs.org.uk/write/MediaUploads/NFCC%20Guidance%20publications/NFCC_Specialised_Housing_Guidance_-_Copy.pdf)

<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205567/Annex\\_B\\_-\\_SoS\\_DCLG\\_Rule\\_43\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205567/Annex_B_-_SoS_DCLG_Rule_43_response.pdf)

## Resourcing

The lack of detail on the proposed regulation of residential buildings under 18m and the form of the regulator makes it difficult to ascertain resource implications. However, we expect there will be a larger role for FRS in the future as a result of the new regime.

An acute issue remains the skills shortages in fire safety skills and knowledge, particularly in specialist roles such as fire engineering where practitioners require a long time to train and become competent in their role. There are concerns a national regulator would strip FRSs of key specialist staff who are difficult to recruit and retain, and take a long time to train. NFCC recommend that this risk can be mitigated by the regulator considering establishing a small central team utilising secondment agreements to transition and upskill staff.

Consideration is also needed to ensure regulators have appropriate ICT infrastructure (given proposals related to digital-by-default building information and Golden Thread requirements). NFCC would like to see greater consideration given to allowing cost recovery mechanisms for some forms of work.

FRSs are already stretching available resources to cover reactive work, such as checking the safety measures in buildings identified as being at risk. This comes at a time when HMICFRS has found protection departments in many FRS are struggling to maintain existing risk-based inspection programmes. The first two tranches of inspections are reporting that protection work was under-resourced in many of the FRSs inspected and that budget reductions have disproportionately fallen on protection teams.<sup>7</sup>

We look forward to further work with Government to support policy development of these proposals and discussion on how the work can be resourced in the future.

***Any additional burdens must be properly resourced, and there needs to be sufficient transitional arrangements to train, recruit and upskill staff.***

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<sup>7</sup><https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19.pdf>  
<https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19-tranche-2.pdf>

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

The proposals outlined by Government across *Building a Safer Future* lack sufficient detail in a number of areas. To account for this, NFCC have relied on a number of assumptions from the content of the consultation document and the call for evidence about how the system will work in order to answer questions. These assumptions are:

- That there will be one new act of parliament sponsored by MHCLG to create the office of the building safety regulator. That this would set out the role and duties of the regulator both generally for all buildings, and specifically for buildings prescribed as 'in scope' for parts or all of the design, construction, occupation, renovation, demolition life cycle.
- That the MHCLG Bill would provide the mechanism for application of the Golden Thread of passage of information and responsibilities during the process and provide a mechanism for additional conditions for use to be required (e.g. a safety case). NFCC's view is that this new Act should allow **any building** to be brought into scope by the building safety regulator.
- Existing or revised regimes, such as building regulations, health and safety and general fire safety, would continue to apply and be enforced in the normal way with oversight from the regulator, who would assume responsibility for matters such as arbitration and determination at building regulation and occupation stages.
- Buildings in scope would follow the relevant Gateway paths, including ongoing compliance with any additional conditions or requirements under the regulatory oversight of the building safety regulator.
- Proposals arising from the Home Office call for evidence would form one of the ongoing general regimes in an upgraded format from the existing Regulatory Reform (Fire Safety) Order 2005 (as amended), as would the amended Housing Health and Safety Rating System (HHSRS) under the Housing Act 2004, though demarcation between these two regimes would be improved by the revisions.

	<b>Respondent details</b>
<b>Q1. Full Name</b>	Nick Coombe
Position (if applicable)	NFCC Building Safety Team Lead, NFCC Protection and Business Safety Committee
Organisation (if applicable)	National Fire Chiefs Council
<b>Q2. Are you answering - on behalf of an organisation</b>	Responding on behalf of the National Fire Chiefs Council (NFCC)
<b>Q3. Contact details</b>	
Address (including postcode)	99 Vauxhall Road, Birmingham, B7 4HW
Email address	<a href="mailto:nicholas.coombe@nationalfirechiefs.org.uk">nicholas.coombe@nationalfirechiefs.org.uk</a>

## Section 2: Fire Safety Order – Scope and Objectives

<b>Q7. To what extent do you agree or disagree with the scope of the Fire Safety Order?</b>
<input type="checkbox"/> Agree strongly <input type="checkbox"/> Agree somewhat <input type="checkbox"/> Neither agree nor disagree <input checked="" type="checkbox"/> Disagree somewhat <input type="checkbox"/> Disagree Strongly
<b>Please Explain</b>
<p>The evidence collected by NFCC at our workshops in March (attended by 43 Fire and Rescue Services [FRSs]) and subsequent follow up meetings, suggested that, generally, they believe the FSO is an adequate piece of legislation, however, 13 years of operation has identified some flaws. In addition to the interface with the Housing Act and HHSRS, there are a range of areas where FRSs believe the FSO could be strengthened and improved. These include:</p> <ul style="list-style-type: none"> <li>• Current enforcement and sanctions need reviewing to ensure that they are sufficiently robust to deter poor behaviours.</li> <li>• Supporting guidance is severely out of date and incorrect in places.</li> <li>• Under Article 38 FRSs do not have powers to require firefighting facilities being installed where they have not been included at initial design and construction stage.</li> <li>• Articles 3 and 5 do not ensure that Responsible Persons can be easily identified and held to account.</li> <li>• Article 27 needs strengthening to ensure appropriate powers of inspectors.</li> <li>• Article 4 (the meaning of “general fire precautions”) and article 8 (outlining the duty to take general fire precautions) need review to ensure compartmentation issues can be appropriately addressed under the FSO.</li> </ul>

These areas of concern will be discussed further under the relevant sections below, and many were included within NFCC's original response to the Independent Review's Call for Evidence two years ago<sup>8</sup>.

In addition to the above, whilst NFCC appreciate the scope of the FSO is primarily for life safety, further emphasis on environmental impacts, community loss and property protection could have significant flow-on benefits, particularly for communities and firefighter safety. Where certain building types form vital community assets, such as schools, hospitals and heritage buildings, there should be the ability within the FSO to factor business continuity considerations into the management of fire safety in a premises.

It should be noted that Dame Judith stated that in order to resolve the issues in the current built environment a multi-faceted approach was required. NFCC support a full technical review of Approved Document B (ADB) and advocate increased provisions for the installation of automatic water suppression systems (AWSS) in the built environment. This would take account of the potential benefits AWSS can provide including the safety of firefighters, community resilience, property protection, environmental protection, business continuity and heritage preservation. AWSS would also go a long way towards protecting vulnerable persons in their homes. NFCC also suggest that Government engage with the insurance industry to understand if there are further opportunities to improve incentives for the installation of suppression systems.

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

Yes

No

Please Explain

Yes, however, the FSO is based on the principle of buildings being built correctly.

NFCC believe that the principles underpinning the FSO allow for a proportionate approach to risk management within non-domestic premises. The ability for responsible persons (RPs) to assess the risks associated with individual premises and their occupants allows for appropriate measures to be put in place, which a more prescriptive regime may not allow.

However, such an approach does have a strong reliance on the competence of RPs (or anyone providing safety assistance to RPs) to understand the risks within their premises, and also the ability to understand how to apply suitable mitigation measures. FRSs have identified many instances where the quality of fire risk assessments of premises (whether in scope buildings or not) are not to an acceptable standard.

<sup>8</sup>[https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC\\_Submission\\_review\\_building\\_regs\\_final.pdf](https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_final.pdf)

The flexibility of the risk-based methodology in the FSO also brings about challenges to the consistency of approach by RPs. Each variation has to be individually considered by FRSs. This has led to FRSs being accused of inconsistency in their regulatory approach in the past, as seen in the *Focus on Enforcement*<sup>9</sup> regulatory review conducted by the Department for Business Innovation and Skills in 2012. This issue could be mitigated through the inclusion of some prescriptive minimum standards for items such as staffing numbers in higher-risk workplaces, and competency requirements for those involved in producing fire risk assessments and the day to day management and maintenance of higher-risk workplaces where there is a sleeping risk and/or vulnerable persons.

After 13 years of delivering fire safety regulation under the FSO, FRSs' experience is that the regulations are still not widely known or understood by those managing premises, with many still not having carried out a fire risk assessment. The principle of continuous improvement is also rarely acknowledged, with cost often being used as a reason for not updating fire safety systems.

An example of this is the need for automatic fire alarm systems to be reviewed for residential care homes following an update to the relevant British Standard in 2013. The revised standard recommends that all fire detector locations should be able to be identified from the fire alarm control panel at ground floor. Currently there is no requirement for retrospective upgrades to fire safety systems. It has been noted by FRSs that many care homes with fire alarm systems that are decades old do not take account of the impact on the safety of highly vulnerable persons and, therefore, do not upgrade their fire safety systems appropriately.

There remains a fundamental disconnect between the non-worsening conditions of Building Regulations, and the expectations of continuous improvement through the fire risk assessment process set by the FSO.

NFCC, therefore, are also calling for provisions to require that refurbishments and changes of use (for **all buildings**) should trigger a requirement to comply with current fire safety standards, as nearly as is reasonably practicable, as is the case in other similar jurisdictions.

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

- Yes  
 No

Please Explain

Yes. NFCC fully support the principle that the person owning the risk should manage that risk. For workplaces, the FSO does provide a reasonable framework for enforcing authorities to ensure the safety of relevant persons. However, after 13 years of application there are some changes that need to be made to ensure it appropriately addresses all fire safety issues.

<sup>9</sup><https://www.gov.uk/government/publications/regulatory-reform-fire-safety-order-2005-focus-on-enforcement-review>

The FSO provides little or no control over residents in their flats in multi occupied residential buildings, which is where fires are more likely to start. The FSO also provides no control over the maintenance of fire safety systems such as smoke detectors and alarms and sprinklers in resident's flats, which may have been provided to support the safety of other residents. NFCC note that this causes issues for RPs and enforcing authorities when holistically assessing and maintaining the safety of persons within multi occupied residential buildings.

In addition, the FSO was never intended to apply to individual residential leaseholders, however, FRSs can find themselves dealing with a large number of persons who do not reside in the residential building in question (or even be located in this country) in order to address issues such as the fire resistance of flat front doors.

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

- Yes  
 No

Please Explain

FRS feedback states that where there is a clear RP, such as an employer, the FSO is sufficiently detailed and pragmatic to allow those persons to take responsibility for ongoing fire safety and protection measures. However, where it is not clear who the RP is, or where there are a number of RPs for one premises, difficulties arise. Adjustments need to be made to Articles 3 and 5 of the FSO to facilitate easy identification of the RP by enforcing authorities.

NFCC also consider that, where a number of RPs have some control over a premises, the duty to co-operate and co-ordinate in Article 22 needs to be strengthened to ensure the coherent and robust management of fire safety.

RPs must appoint competent persons to assist them with their preventive and protective measures. NFCC believe that more guidance is needed to inform RPs of their responsibilities under the FSO, and to emphasise that appointing a competent person does not absolve the RP from their legal responsibilities. It is considered that this is currently unclear.

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

- Yes  
 No

Please Explain

No. NFCC do not believe that the FSO is wholly successful in meeting the objective of supporting compliance and enforcement activity through guiding principles and guidance.

The principles detailed in Schedule 1 Part 3 of the FSO set out a methodology for risk reduction which is not carried through into the guidance documents aimed at assisting RPs to comply. The emphasis is on identifying those at risk and hazards rather than assessing risks and reducing them.

All the existing guidance is significantly dated, meaning it is difficult for the RP to apply. It also means FRSs are often going against Government guidance to enforce appropriate provisions, which can cause issues for the enforcing authority.

For RPs there needs more signposting on how to select a competent and suitably trained fire risk assessor, and the types of fire risk assessment methodology that are acceptable. FRSs follow the principles of Better Regulation and the Regulators Code, however, this has been seen by some as undermining enforcement activity. Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) inspections of FRSs in 2018/19 have highlighted a lack of enforcement by fire safety officers, but this is partly driven by the culture established out of the Regulators Code and agenda for helping businesses to thrive and grow, rather than a flaw in the FSO specifically.

### Section 3: Issues Specific to Multi-Occupied Residential Buildings

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

NFCC think one option that could provide clarity would be to mirror the approach which has been taken in the new structure of the clarified ADB, which separates residential fire safety from workplace fire safety. However, we note that this requires further consultation with FRSs.

Managing fire safety in multi-occupied residential buildings is different than workplaces, particularly as employers have control over their employees. This is obviously not the same in multi-occupied residential buildings; it is a feature which needs to be considered for any new legislation going forward.

The new regulatory framework has an opportunity to introduce a regime for residential fire safety, allowing the FSO to continue managing workplaces; FRSs have told us, that they see an important role for themselves in these buildings. We note a risk that a third regime will be introduced by the proposed changes, and careful consideration should be given as to how to avoid duplication.

The consultation proposals from Government are not clear on whether FRSs would still have a regulatory role in blocks of flats below 6 storeys. FRSs have identified significant risks which could be associated with being removed from low-rise residential buildings:

- In mixed-use buildings, there could still be overlap issues in the common parts over which instrument would take primacy (the FSO or HHSRS).
- Fewer opportunities for FRSs to undertake prevention work, as Protection officers would no longer be going into these buildings; this could lead to an increase in fires and deaths.

- The majority of fire deaths happen in dwellings. Removing FRSs would mean FRSs would not have any enforcement powers in residential buildings.
- Because Fire and Rescue Authorities would no longer be an enforcing authority according to Article 45 of the FSO, developers would no longer have a duty to consult with Fire and Rescue Authorities at building control stage. This could lead to buildings being built within communities that the FRSs are unaware of.
- Reductions in funding for FRS has meant the balance of funding and resources allocated to their protection, prevention and response functions has been further strained. In their recent inspections HMICFRS have concluded that protection functions are often under-resourced. Fire safety, if forced to compete with the wider remit of pressures that exist for instance within local authorities, could be deprioritised and lead to a 'race to the bottom'.
- FRSs may be asked for advice in residential buildings by other regulators due to a lack of expertise to deal with fire safety issues effectively. Such advice would come without any funding; simultaneously, a refusal to provide the advice would also create risks, both for the FRSs and for residents.
- Could create a gap for FRSs in alignment of protection and response functions. It may be difficult to influence operational considerations into the safety of low-rise buildings. FRSs could lose the link of passing on key risk information to operational crews, and end up with less knowledge about the built environment.
- The public trust FRSs to deal with fire. If fire safety in these buildings was given to another authority, it is likely complaints would still come back to FRSs.
- FRSs have a clear priority to protect the public from fire. FRSs take unbiased action which is purely to protect the safety of the public.
- Dame Judith diagnosed conflicts of interest as a symptom of a broken system. If one public body (such as a local authority) provides planning, enforces the planning, provides building control, in some cases owns the buildings, and then enforces the standards afterwards, and one part of this system fails, what is the remedy for the public?

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

FRSs have told us that in workplaces the broad parameters of the FSO work well for the most part. However, within residential buildings, fundamental differences in the way risk is determined between the FSO and the Housing Act framework, including the HHSRS, mean that the two do not interface intuitively.

Under the FSO approach, risk is assessed by first assuming that a fire will happen. Under the HHSRS, Environmental Health Officers (EHOs) are required to consider the likelihood of a fire occurring, which is statistically very low. This then has to be balanced against the risks of 28 other hazards EHOs are also required to assess.

Within the HHSRS approach, across the full 29 hazards for housing enforcers fire risk, therefore, scores as a low priority when compared with other hazards. For FRS officers, fire is the only priority, however, FRS jurisdiction applies only to the parts of the building used in common. A coherent fire safety regime is dependent on an understanding of what is happening both within flats and within the common parts.

In addition, there are differing definitions and interpretations over what parts of the building constitute common parts, with the Housing Act using a definition of “common parts” and the FSO using a different definition of “parts used in common”.

In 2009, following the fire at Lakanal House, the Coroner<sup>10</sup> made a specific recommendation to Government: “to provide clear guidance on the definition of “common parts” of buildings containing multiple domestic premises.”

In 2017, Dame Judith’s interim report identified that the interface across these two frameworks makes it significantly more challenging for Government to ensure that there is a sufficient holistic focus on the fire safety of all occupied buildings. Dame Judith recommended in her interim report that this issue be clarified. A whole system approach is needed.

If both regimes were to continue to apply, the following measures would need to be implemented:

- A strong and clarified definition of ‘common parts.’
- A statutory duty for enforcing authorities to collaborate in relevant buildings.
- Enforcers being held to account if they do not collaborate; and
- Clear guidance on who is responsible for enforcement in different areas of the building.

Due to the lack of detail on key aspects of the proposals, NFCC have made a number of assumptions from the content of the consultation document and the call for evidence about how the system will work in order to answer some questions. These assumptions are:

- That there will be one new act of parliament sponsored by MHCLG to create the office of the building safety regulator. That this would set out the role and duties of the regulator both generally for all buildings, and specifically for buildings prescribed as ‘in scope’ for parts or all of the design, construction, occupation, renovation, demolition life cycle.
- That the MHCLG Bill would provide the mechanism for application of the Golden Thread of passage of information and responsibilities during the process and provide a mechanism for additional conditions for use to be

<sup>10</sup><https://www.lambeth.gov.uk/sites/default/files/ec-letter-to-DCLG-pursuant-to-rule43-28March2013.pdf>

required (e.g. a safety case). NFCC's view is that this new Act should allow **any building** to be brought into scope by the building safety regulator.

- Existing or revised regimes, such as building regulations, health and safety and general fire safety, would continue to apply and be enforced in the normal way with oversight from the regulator, who would assume responsibility for matters such as arbitration and determination at building regulation and occupation stages.
- Buildings in scope would follow the relevant Gateway paths including ongoing compliance with any additional conditions or requirements under the regulatory oversight of the building safety regulator.
- Proposals arising from the Home Office call for evidence would form one of the ongoing general regimes in an upgraded format from the existing FSO (as amended), as would the amended HHSRS under the Housing Act, though demarcation between these two regimes would be improved by the revisions.

**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?**

A lead RP similar to Article 22(2) could be utilised alongside strengthened requirements for coordination and cooperation.

High-rise residential buildings are now routinely built with commercial premises at ground floor and increasingly gyms, restaurants, and communal facilities for residents and guests, as well as viewing platforms. NFCC believe this whole building approach will avoid duplication and exploitation of loopholes. The new regulatory framework and an uplifted FSO could be used as enforcement tools in occupation.

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

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

Yes

No

Please Explain

Yes. FRSs have experienced many issues with establishing the correct RP. This can have wide ranging implications for ongoing building safety, as it can lead to protracted enforcement times due to issues identifying the correct person to serve a notice on, rather than working to resolve issues. Further issues include:

- There are other persons with responsibilities identified under Article 5(3) of the FSO which increases the complexity of identification of the correct person to enforce against.

- The management structure of a business can often be a web of directors within a conglomerate, or shell companies which are dissolved when enforcement action begins against them.
- The RP lives abroad and is uncontactable.
- Where a family member is listed as company secretary or CEO, but has no involvement in the business.
- Leaseholder arrangements (especially where a premises is sub-let) leading to ambiguity as to whether an occupant is a RP, an Article 5(3) person or neither.
- Where responsibility is delegated to an employee, who has had no training or experience of managing the risk, but is put forward as the RP or manager of the site (e.g. during performance inspections where licensed premises are leased from a pub company).

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

- Yes  
 No

Please Explain

No. NFCC consider the duties of the RP, as detailed in the legislation, are theoretically sufficient to ensure adequate fire safety measures are in place. However, these are dependent upon the competency of the RP to identify what is required in their premises.

In addition, the FSO does not require an RP to demonstrate compliance with their duties. Where there are higher-risk premises, there should be more prescriptive requirements in the FSO. For example, the recording of details of emergency plans and actions to assist vulnerable persons in the event of an emergency.

The guidance that accompanies the FSO gives a grounding in the identification of hazards and those at risk, but does not provide information on how to apply the principles of prevention that are outlined in the FSO. The guidance should be reviewed in order to keep these principles at the core of advice to RPs, and also outline the circumstances in which a minimum level of competence is required for those involved in producing fire risk assessments and day to day management and maintenance of higher-risk workplaces where there is a sleeping risk and/or vulnerable persons.

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

- Yes  
 No

Please Explain

No. The expectation of the RP to be able to self-evaluate can pose difficulties due to it often being the case that “they do not know what they do not know.” Competence is a key factor in the adequacy of safety in a premises, as RPs cannot assess the risk of hazards that they are either unaware of or do not adequately understand.

FRS experience also shows that there are many premises for which the RP is still unaware of their responsibilities under the FSO, even after nearly 13 years of its being in place.

This could be overcome by nominating, under Article 18, a competent person to assess the RP’s compliance with their duties. This could be supported by additional guidance for RPs which outlines their key responsibilities in plain English.

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

Yes

No

Please Explain

Yes. FRSs have experienced many issues with regard to cooperation between RPs. These include:

- RPs not being aware of their duty to cooperate and coordinate on fire safety matters in premises.
- Leaseholders in premises not being aware of their responsibility, instead believing this belongs to a building owner/manager.
- RPs not communicating with each other, which can lead to problems with compliance, for example where an escape route passes through a part of a premises which is overseen by a different RP. In this instance there needs to be clear communication around working hours and the availability of the exit route for use.

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

Yes

No

Please Explain

Yes. FRSs have experienced many issues with regard to coordination between RPs. These include:

- RPs not communicating with each other, which can lead to problems with compliance, for example where an escape route passes through one part of a premises overseen by a different RP. There needs to be clear communication around working hours and the availability of the exit route for use.
- Difficulty in implementing new safety features that are common to a number of RPs in a building, due to problems establishing who has the primary role in paying for them.

- Difficulties in establishing who is responsible for the testing and maintenance of safety systems in buildings, especially where the building is owned by an entity that is not present on the same site.

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

Yes

No

Please Explain

Yes. NFCC agree that the general principles for carrying out a suitable and sufficient fire risk assessment are sufficient. However, the effectiveness of this requirement is highly dependent upon the competence of those carrying out the fire risk assessment. Those without a suitable level of competence are often unable to identify hazards and those at risk, or to assess the level of risk and implement mitigating measures. The principles of prevention in Schedule 1 Part 3 should be key to the risk assessment process, with greater emphasis placed on this aspect of the FSO.

A review of Articles 4 (Meaning of “general fire precautions”) and 8 (Duty to take general fire precautions) would help to ensure compartmentation issues are appropriately covered, and could be addressed as part of a suitable and sufficient fire risk assessment.

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

Yes

No

Please Explain

Yes. The requirements for review of a fire risk assessment are sufficient, although they are subject to the level of competence of the RP. If the RP is unaware of the circumstances in which a review should be carried out, it will not take place. This aspect could be supported by additional Government guidance specifically aimed at informing RPs of their responsibilities.

The requirements of review can also be influenced by whether an external fire risk assessor has been used. Some fire risk assessors set arbitrary review dates (such as annual reviews) in order to stimulate business, but this can lead to RPs assuming that the fire risk assessment remains valid for that year and does not need to be reviewed in between times.

**Q22. To record the fire risk assessment?**

Yes

No

Please Explain

No. The requirements to record the fire risk assessment should be clarified. Currently there is no requirement to record the fire risk assessment unless the RP employs 5 or more persons, the premises have a licence or there is an enforcement notice in place. In addition, the only requirement is to record the significant findings of the fire risk assessment, which leads to confusion amongst RPs as this can result

in an arbitrary list of actions with no basis or justification for why they need to be undertaken.

NFCC consider that the guidance accompanying the FSO should be clearer with aspects of prescription included. At present, the language used can be open to interpretation by RPs, fire risk assessors and FRSs, which can lead to inadvertent non-compliance, gaming the system and inconsistent enforcement.

A baseline should be in place to specify explicit minimum expectations before interpretation is permitted (e.g. compensatory features).

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

- Yes  
 No

Please Explain

Yes. NFCC are fully aware of the Government guides (as we assisted in their drafting), however, they are significantly out of date. The guidance concentrates far too much on building type rather than the vulnerability of the occupants.

The guidance to the FSO (e.g. Guidance Notes 1, 2 & 3) also need updating. In 2012 CFOA (NFCC's predecessor) approached DCLG to update Guidance Note 1 - Enforcement. This was refused. CFOA produced their own document, which has been updated at various times since then and is the most downloaded document on the CFOA/NFCC website. It is used by all FRSs.

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

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

Please Explain

Yes. FRSs, dependent upon their individual unique built environment, will be familiar with, and must have regard to, relevant guidance issued under Article 50 of the FSO. However, due to the lack of updates for this guidance, FRSs have either had to produce their own or use alternative guidance, which can cause issues when carrying out enforcement activity. Notwithstanding the answer to Q23, there are multiple other guides that FRSs use and also recommend to RPs.

In addition, the Government guides were created for small, low-risk premises. Each guide only covers buildings up to 4 floors before advising the RP to seek professional guidance, but in most cases there is no further guidance for those assessing buildings beyond this scope. NFCC consider that further guidance and clarity should be provided around this matter.

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

- Yes

No

Please Explain

Yes. When NFCC submitted our response to the Independent Review's Call for Evidence<sup>11</sup> two years ago, we noted that the original government suite of fire safety guides was then over 10 years old, and has not been reviewed; lessons have been learnt since the introduction of the FSO. Further enforcement guidance was due to be produced by Government on these and other issues that were anticipated to arise in light of experience and the application of the FSO. This has not been forthcoming and has left gaps.

In that time, the sector has had to produce its own guidance on housing. Where guidance is not issued under Article 50, this brings about questions of enforceability and whether people are required to follow it. Inconsistencies in various guidance documents could be brought in line with each other. This also creates a risk that independent parties can choose to withdraw their guidance and leave large sections of the sector with no guidance to follow.

All the specific guides could be withdrawn and replaced with a general guide for workplaces and one for housing. Other specialist guides should be produced by the new regulator and others given Government assurance under Article 50, for example:

- *Guidance on fire safety provisions for certain types of existing housing*<sup>12</sup> produced by the Local Authorities Coordinators of Regulatory Services (LACORS);
- *Fire Safety in Specialised Housing*<sup>13</sup> produced by NFCC; and
- *Fire Safety in Purpose Built Blocks of Flats*, produced by the Local Government Association.

NFCC notes in respect of the latter, that this guidance was previously deemed as fulfilling duties under Article 50 in a letter<sup>14</sup> from the Secretary of State for Communities and Local Government.

All guidance should be subject to regular review every 3 years.

Further support is then needed to encourage a register of competent fire risk assessors that will ensure competent people will carry out fire risk assessments in the more complex premises. These individuals should be able to understand risk and benchmark against current standards. This will allow RPs to choose the correct person for the role.

Following NFCC's recent and extensive consultation exercise with FRSs, we have many specific examples and are willing to offer support and expertise to help determine future guidance.

<sup>11</sup>[https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC\\_Submission\\_review\\_building\\_regs\\_fin\\_al.pdf](https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_fin_al.pdf)

<sup>12</sup><https://www.gov.uk/government/collections/fire-safety-law-and-guidance-documents-for-business>

<sup>13</sup>[https://www.nationalfirechiefs.org.uk/write/MediaUploads/NFCC%20Guidance%20publications/NFCC\\_Specialised\\_Housing\\_Guidance\\_-\\_Copy.pdf](https://www.nationalfirechiefs.org.uk/write/MediaUploads/NFCC%20Guidance%20publications/NFCC_Specialised_Housing_Guidance_-_Copy.pdf)

<sup>14</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205567/Annex\\_B\\_-\\_SoS\\_DCLG\\_Rule\\_43\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205567/Annex_B_-_SoS_DCLG_Rule_43_response.pdf)

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

- Yes  
 No

Please Explain

Yes. As stated previously, the Article 50 guidance is significantly out of date and successive departments have refused NFCC/CFOA requests and offers of assistance to review them. Following NFCC's recent and extensive consultation exercise with FRSs, we have many specific examples and are willing to offer support and expertise to help determine future guidance.

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

- Yes  
 No

Please Explain

Yes. Existing guidance for RPs on producing a fire risk assessment on means of escape for disabled persons<sup>15</sup> is generally not considered as part of the main suite of CLG guidance. Moreover, the suite of guidance documents is generally focused on building type rather than occupancy, process and content.

It is those persons who are unable to self-evacuate that are at highest risk of injury or death in the event of fire. Therefore, a person-centered approach is critical. Additional control measures can help vulnerable persons in the event of fire. For example, firefighting/evacuation lifts are a key consideration for premises with mobility impaired persons occupying accommodation above ground floor. The identification of these types of fire safety measures are integral to successful fire risk assessment for disabled persons.

In addition, guidance should advise where consideration should be given to the installation of AWSS or an individual watermist personal protection system in a single location for the greatest level of risk, for example a bed-bound individual who is a smoker.

Fire risk assessments and especially emergency procedures/evacuation plans need to be more 'people centred'. For 'fire risk assessment considerations' for vulnerable persons, reference should be made to the Building Research Establishment's published research *Evacuating vulnerable and dependent people from buildings in an emergency* (FB 52) by D Crowder and D Charters, 2013. This research demonstrates that the assisted evacuation of persons from a building should be planned for and can be much more resource intensive than commonly thought. The assessment of buildings in which assisted evacuation needs to take place should be risk assessed in line with the likelihood that the means of escape will need to remain safe for a period far in excess of that currently accounted for in guidance.

<sup>15</sup><https://www.gov.uk/government/publications/fire-safety-risk-assessment-means-of-escape-for-disabled-people>

The assessment of such scenarios is likely to require the involvement of highly competent persons to assist RPs to ensure the safety of occupants.

Consideration must also be given to those with mental health conditions. This approach would align with the *Building a Safer Future* consultation with particular reference to the provision of information, safety cases, design and Gateways – fire statements etc.

**Q28. Are the employee fire safety training requirements sufficient?**

- Yes  
 No

Please Explain

No. NFCC believe that the employee training requirements need further definition in order to clarify what 'adequate' training consists of and whether training needs to consist of both practical and theoretical aspects (e.g. is watching a video sufficient, or is there a need to carry out a practical assessment similar to a food hygiene assessment?). This is particularly the case in premises with vulnerable occupants who may be reliant upon trained staff to assist their safe evacuation.

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

- Yes  
 No

Please Explain

Yes. The duties contained within the FSO are sufficient, but the FRS experience is that employees are frequently unaware of their role. This is linked to the adequacy of the training as outlined in Q.28 above. Updated guidance should outline the responsibilities of employees, particularly with regard to their duties towards other relevant persons in a premises.

It may also be useful to extend the duties of employees to occupants of the building, including residents in a mixed use building.

**Q30. Are the competent person requirements sufficient?**

- Yes  
 No

Please Explain

No. NFCC consider that the competent person requirements in the FSO are insufficient to ensure that persons are competent to undertake key fire safety functions. It is noted that the FSO has been written to be proportionate to cover a multitude of premises types and risks. However, currently individuals with limited or no fire safety competence can manage and maintain premises, or support the RP in managing and maintaining premises with no appropriate checks and balances on competency in place.

It may be that certain articles within the FSO, such as those relating to fire risk assessments, require the competency of those undertaking the function to be demonstrated by accredited third party certification and inclusion on a register of competent persons for specific types of higher-risk premises. This could also be introduced for certain building types under Article 24 of the FSO.

NFCC also consider that some of the competency proposals put forward in the *Building a Safer Future* consultation should be drawn across to support the competency requirements in the FSO. This could include an extension to the proposed overarching competence framework for all disciplines for all building types and captured within a Publicly Available Specification or British Standard. The competency committee could extend their scope over time to include responsibility for the competency of persons interacting with all buildings, not solely those in scope. This would assist in controlling the development of two tiers of competency for premises in and outside of scope.

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

- Yes  
 No

Please describe your example

No. In most cases FRSs will only look at non-compliance with the FSO. As a result, it looks at whether competent persons have been nominated rather than whether they are competent.

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

- Yes  
 No

Please Explain

Yes. NFCC consider that the fire safety information sharing and management requirements are generally sufficient. However, issues arise when the RP is not aware of their obligations and do not know who to share information with. It may also be that the information is deemed to be sensitive and, therefore, individuals may be reluctant to be proactive in this respect. Examples or templates of what and how to share information would be welcomed.

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

- Yes  
 No

Please Explain

No. Most FRSs do not keep examples 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?**

- Yes  
 No

Please Explain

No. The history of inspections and some fire safety information is kept by FRSs, but this may not be the case for RPs. This means the FRSs can be the only party who is aware of historical fire safety information relating to a premises.

NFCC consider that this is an area that needs to be improved. There should be a clear history of premises information for all premises, similar to the principles outlined in the Golden Thread of information in the *Building a Safer Future* consultation. RPs should have to demonstrate due diligence in passing on (and ensuring receipt of) fire safety information through the life cycle of the building.

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

- Yes  
 No

Please Explain

No. The FSO replaced over 100 pieces of workplace fire safety legislation and consolidated them into a single piece of legislation. The FSO was primarily designed to regulate fire safety in workplaces. It does, however, also include the regulation of fire safety in the parts used in common of multi occupied residential premises.

This creates an unclear legislative interface with the Housing Act, which also regulates fire safety, as one of 29 hazards under the HHSRS. The lack of clear definitions and interpretations in both pieces of legislation has led to an inconsistency in enforcement standards and approach. In addition, guidance has not been updated for 13 years which has exacerbated this issue.

NFCC are of the view that the interface between the legislation in multi-occupied residential premises is unclear, and there should be clear demarcation of who is responsible for the enforcement of fire safety in these buildings.

Over the past few years, Government policy has encouraged a culture of business support in FRSs indicated through fire safety being included in the *Focus on Enforcement*<sup>16</sup> campaign, the introduction of the *Regulators Code* and *Better Business for All* (BBfA) and the addition of a fire safety category for Primary Authority. HMICFRS recently stated that some FRSs are not carrying out sufficient enforcement activity. Clarity from Government on FRSs' regulatory role would be beneficial.

NFCC also note that HMICFRS highlighted a lack of resources in FRS Protection departments. This impacts the ability of FRSs to undertake significant enforcement activity due to the associated time and cost implications. This aspect may require further consideration by Government.

<sup>16</sup><https://www.gov.uk/government/publications/regulatory-reform-fire-safety-order-2005-focus-on-enforcement-review>

NFCC believe that there also needs to be clear delineation between informal action and formal enforcement including notices, court action, Police and Criminal Evidence Act interviews and crown/ magistrate prosecutions. The boundary between when informal action and formal proceedings should be undertaken needs to be made clearer, as this would help set out the consequences of a continued lack of compliance by RPs. The introduction of a legal caution under the FSO could aid this by giving a clearer picture of due diligence or calculated avoidance for 'rogue landlord' type RPs.

It is noted that the pursuit of formal legal action can make maintaining relationships with RPs more challenging for further follow up actions, as a prosecution does not necessarily guarantee compliance.

In addition, the FSO enforcement framework could be enhanced through:

- Fixed penalty notices for low level persistent offences to promote culture change.
- The potential for the building safety regulator to support FRSs through central or coordinated delivery of enforcement, certainly prosecution. This would be highly beneficial where prosecutions are taken forward that test the interpretation of the FSO.

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

Yes

No

Please Explain

Yes. NFCC consider that the scope of the Secretary of State's power to make regulations under Article 24 are sufficient and have been used effectively to introduce *The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009*, which places prescriptive requirements on sub surface railway stations to ensure the safety of those working and travelling on underground transport networks. NFCC consider that this article could be used for higher-risk premises, such as care homes, if they do not fall into scope of the new regulatory system to ensure appropriate safety levels.

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

Yes

No

Please Explain

No. As covered within our response<sup>17</sup> to the Independent Review's original Call for Evidence two years ago, NFCC believe that the requirements of Article 38 of the FSO are inadequate, as they only allow for the maintenance of existing firefighting facilities. The current form of the Article is based on the assumption that all buildings have been built with the correct firefighting facilities.

<sup>17</sup>[https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC\\_Submission\\_review\\_building\\_regs\\_fin\\_al.pdf](https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_fin_al.pdf)

In general, the framework is focused on life safety, primarily the safety of occupants in terms of escape, the safety of firefighters is catered for within ADB (which we don't believe offers the correct level of protection for firefighters). Article 38 of the FSO can only ask for 'maintenance' of firefighting facilities, but cannot require improvements to them.

This means that, while new buildings can be designed to provide firefighter safety, older buildings are not, and risk assessments are not expected to consider such issues. If we consider this in the context of an expected building's life span, which could be anywhere up to several hundred years, this is a long time to have potentially inappropriate firefighting facilities.

Firefighting lifts are one example where older units may not have the latest safety features, such as dual power supplies. Yet under building regulations, even if a refurbishment were to include changing the lift cars, the non-worsening condition could still be applied.

Another area where this is an issue is during a change of use, especially from office spaces (or similar) to sleeping accommodation. In this instance, if the building were greater than 30m, it would require sprinklers to be installed under current requirements if it were a new build. However, existing buildings are not required to meet current requirements so long as conditions are not made worse than those existing. We believe this is inappropriate; in circumstances such as this, the building should meet current requirements or, where this is difficult or impossible, compensatory features should be provided.

Article 38 of the FSO needs to enable enforcing authorities to make RPs install firefighting facilities where they were previously missed out, and/or when the risk has changed to a degree that the existing building needs to be improved or have new firefighting features installed.

The FSO also needs to consider the adequacy of firefighting facilities in buildings where the FRS is not the enforcing authority. For such buildings, there needs to be an assessment of whether non-FRS enforcing authorities (e.g. local authorities in the case of sports grounds) have the necessary competence to assess the adequacy of firefighting features. Responsibility under this Article may need to be extended to the local FRS for all buildings.

As per our response to the Call for Evidence two years ago, amendments should also be made to legislation to require that refurbishments and changes of use (for **all buildings**) should trigger a requirement to comply with current fire safety standards, as nearly as is reasonably practicable, as is the case in other similar jurisdictions.

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

- Yes  
 No

Please Explain

No. Dangerous substance controls should be accounted for under different regulations (such as Dangerous Substances and Explosive Atmospheres Regulations). The FSO requirements associated with dangerous substances should be made more specific, requiring evidence that such substances have been risk assessed under the applicable legislation.

In addition, there should be a further requirement for those assessing dangerous substances to demonstrate their competence to do so, whether this be the RP or a nominated third party.

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

- Yes  
 No

Please Explain

Yes. The requirements specific to young persons are sufficient, although consideration should be given to extending these principles towards other vulnerable groups (e.g. those with continuing special educational needs).

The main issue with these requirements from an FRS perspective is that they are not well known amongst RPs, and it is unclear how often they are adhered to.

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

- Yes  
 No

Please Explain

Yes. FRSs have experience of dealing with fire safety arrangements for those especially at risk in a workplace. At present, RPs often interpret the FSO as only applying to persons working in the premises. However, these arrangements not only apply to those working in the workplace, but also to occupants in premises, such as care homes and specialised housing.

Fire safety provisions in specialised housing should be clarified as this is often used as a way for RPs to provide lower fire safety standards appropriate for general needs housing rather than what is appropriate for the accommodation of vulnerable persons.

Other examples of those especially at risk in a workplace include: temporary staff; lone workers; staff with disabilities; wheelchair users; work placements; and contractors. All should be given a full induction (and regular training where appropriate) on fire safety arrangements. Often RPs do not give due consideration to the different needs and training requirements of these persons.

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

- Yes  
 No

Please Explain

No. NFCC consider that this is an area that should be clarified and strengthened as it allows people to 'game the system'. Examples of this include:

- Domestic premises used sporadically (for example, 'Airbnb' and short-term letting type accommodation); the FSO only applies when they are put to this use, which limits FRS powers.
- Use of homes for nursery/childcare facilities.
- The requirements to assess safety for home-help.
- The use of heritage properties for holiday accommodation.
- Care in domestic premises – FRSs are seeing an increasing use of domestic premises used as residential care homes, but with the providers seeking to avoid full regulation by registering each individual separately in order to claim that the FSO does not apply in the premises.

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

Please support your views.

NFCC have been clear for many years that it should be people's vulnerabilities, rather than building types, that determines if a building is 'higher-risk'. Any workplace that contains persons with specific vulnerabilities (e.g. hospitals, care homes, and specialised housing), is of a higher-risk. This particularly applies to any building involving progressive horizontal or phased evacuation, as the extended evacuation process itself can place staff under additional risk. These complex systems also require a greater degree of management control and training which is not always present.

In addition, a wider consideration of factors applicable to the building should be considered in line with the *Provision of Operational Risk Information System*. This considers buildings which have a significant impact on the local or national economy (super large warehouses), community asset buildings, (such as schools), and other national assets (such as Grade 1 listed buildings).

NFCC is not clear on why the analysis used to support the proposals in *Building a Safer Future* have not taken account of other available risk information, such as that used in the Fire Service Emergency Cover (FSEC) Toolkit and Integrated Risk Management Planning Guidance Note 4. We recommend that consideration is also given to the data within the Government's FSEC Toolkit, produced to support Fire and Rescue Authorities' Risk Based Inspection Programmes<sup>18</sup>, which incorporates data such as census output areas, local historical incident data and socio-demographic factors, and multi-variate analysis to enable geographic targeting of community fire safety. This takes into account socio-demographic factors, in addition to the actual historical incident data, plus the intervention activities, to establish the total dwelling fire risk level after intervention has been taken into account.

The FSEC Toolkit calculates a risk level for each output area, which is directly comparable between FRSs and consistent across Great Britain. NFCC note that

<sup>18</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7636/940448.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7636/940448.pdf)

within FSEC, buildings such as hospitals and care homes score much more highly than purpose built blocks of flats.

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

- Prisons
- Hospitals
- Supported/sheltered housing
- Residential educational buildings
- All of the above
- None of the above
- Other – Please specify

NFCC are particularly concerned that residential care homes are not included in the list above despite them being a focus of FRSs for many years.

Delayed or alternative evacuation procedures require a greater degree of management control and staff involvement in these premises should a fire occur. In these premises, staff have to make decisions and consider the effects of evacuating a building upon its occupants. The sounding of an automatic fire detection and alarm system acts as the beginning of a work process for staff, rather than a signal to leave the building, as in most other premises.

Despite the relatively low rates of fires presented in the data, historic evidence has shown that when a fire does occur, the residents can be particularly vulnerable due to the need for assisted evacuation. Multi fatality fires have occurred in these premises and we would argue that it may be poor recording on FRS information recording systems that has led to these types of premises not indicating a higher fire rate.

NFCC also believe that all listed heritage premises should be considered as higher-risk workplaces due to the challenge presented to those using them as 'workplaces,' and the potential loss of a national asset.

NFCC have evidence of an increase in fires in specialised housing. There is also Government support towards more people receiving care in their own homes. These homes are being increasingly marketed as catering for different vulnerabilities, however, the buildings have no extra facilities from a fire safety point of view. They are not treated as workplaces despite being staffed, as they are defined as private homes, allowing them to have reduced fire safety measures. This cannot continue to happen.

Care homes are taking more individuals with serious conditions who cannot be evacuated, but are not taking these types of vulnerabilities into account in their risk assessments.

Fire safety issues in hospital and care home stock have been raised a number of times, as summarised by NFCC in a recent advice to the Home Office and MHCLG.

For example, themed inspection programmes of care homes in 2017/18 across London and Hertfordshire identified significant issues, including:

- Compromised compartmentation;
- Poorly installed or missing cavity barriers;
- Inappropriate construction materials;
- Voids created within cavities due to poorly installed materials; and
- Inadequate fire stopping and fire separation.

In Hertfordshire, out of 243 audited care homes at the time of reporting, approximately two thirds were found to have fire safety deficiencies. The London Fire Brigade (LFB) carried out detailed inspections of 177 care homes in late 2018. 57% of the care homes inspected received a formal notification from LFB to address issues.

NFCC believe that care homes need to be part of the new regime at planning, design and construction phase to ensure these buildings are built correctly to begin with.

Guidance on care homes is also outdated, allowing too many beds in a compartment. Guidance was originally based on assumptions that these buildings would simply provide housing for elderly, rather than (increasingly) those with serious vulnerabilities.

FRSs have also reported serious issues with staff numbers in these premises, especially at night.

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

- Yes  
 No

Please support your answer.

Yes. NFCC are particularly concerned where vulnerable people rely on the assistance of others to escape and where evacuation is not easily achieved. The evacuation process can place vulnerable persons and staff at additional risk.

Building types of concern include:

- care homes;
- hospital buildings utilising progressive horizontal evacuation; and
- Specialised housing.

NFCC consider that a clear definition of what specialised housing is would also be necessary. This would need to be clearly worded to avoid gaming of the system by developers calling developments alternative names to avoid increased fire safety provisions.

NFCC believe that all of the building types listed above should have the highest level of protection to give occupants time to escape safely. NFCC have been recommending sprinklers in these types of buildings for many years and continues to do so to ensure the safety of all occupants.

Fire safety issues in hospital and care home stock have been raised a number of times. In 2014, problems at a Private Finance Initiative (PFI) hospital in Birmingham, which was built by Balfour Beatty, were identified. This involved many of the hospital's fire dampers being installed in positions which made them impossible to check and maintain.

In June 2015, fire stopping issues within the Cumberland Infirmary in Carlisle were widely publicised. This hospital was built under a PFI deal with Health Management Carlisle Limited and opened in 2000. The remedial work was reported to require significant remedial fire stopping works to support the Public Health England strategy.

In August 2016, LFB attended a National Association of Healthcare Fire Officers meeting where compartmentation issues were discussed. NFCC understand that NHS England has previously requested all NHS Trusts review compartmentation standards within their property portfolios. It was stated that although this request had been made, there was no associated recommendation to resolve issues if they were identified.

In April 2017, a Cheshunt care home in Hertfordshire was the scene of a major fire. Firefighters rescued 33 elderly and immobile residents but sadly two residents died. Crews found residents in their rooms, many still in bed and unable to move due to their physical condition.

Some FRSs have reported cases where NHS Trusts seem to be under significant pressure to occupy unsafe hospital buildings as a consequence of the manner in which they have been funded by Government; in these examples buildings then have to be occupied but with various risk mitigation measures in place at additional cost. These can include enhanced staffing ratios (nearly 1:1), partial occupation, fire safety floor walkers, reduced hours (7am – 7pm Mon-Fri) and no reduced mobility patients.

FRSs have also raised concerns about private finance initiatives introduced in 1992. It may be that build quality has deteriorated due to rigid build time constraints, with significant penalties for overrun and a squeeze on profit margins resulting in less focus on quality assurance.

NFCC support the issues highlighted by the Independent Expert Panel to the Secretary of State for Housing, Communities and Local Government (in a letter dated 19 December 2018). In late 2018, representatives from NHS Improvement's Estates and Facilities Team attended the Panel, presented the current position, and discussed remediation plans. Whilst recognising the strong commitment from all staff involved, the Panel expressed concern at the current position relating to overall fire risk in some hospital buildings.

NFCC believe that these buildings also need to be part of the new regime at planning, design and construction phase to ensure these buildings are built correctly to begin with.

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

Yes

No

Please Explain

No. NFCC believe that, for certain higher-risk workplaces, greater levels of protection should be applied to protect those who are most vulnerable in the event of fire. Article 24 could be a route through which this is achieved. Additional regulations have been introduced under Article 24 of the FSO for sub-surface railway stations; *The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009*.

The provisions and concept of fire risk assessment are sufficient, but the applicable guidance requires review. Also, additional mandatory competence requirements for those assessing the safety of vulnerable persons should be brought in to the FSO. This would ensure that those carrying out fire risk assessments have a suitable understanding of the key risks and mitigations to safeguard vulnerable persons.

NFCC would also like to refer to the comments submitted in our original response to the Independent Review's Call for Evidence about statutory undertakers<sup>19</sup>. A requirement for an independent third-party review of transport infrastructure proposals (such as a building control body) as required for most of the built environment may also be appropriate due to the scale and complexity of these projects.

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

Yes

No

Please Explain

Yes. NFCC believe that the information required at the design and construction stage under the new regime could be used to support assumptions made in the fire risk assessment at occupation stage. Supporting evidence, such as the robust demonstration of compartmentation standards, would greatly assist in the ongoing management of a building.

The proposals for new dutyholders during the construction phase of the building would also assist in ensuring buildings are safe to occupy, and that the fire risk assessment carried out on occupation is based on evidence of the correct installation and operation of fire safety features of a building. The subsequent requirements for the communication of information from the construction 'client' to the RP on occupation would also provide assurance that a proper handover had been carried out, and that the ongoing management should start from a position of being well-informed.

<sup>19</sup>[https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC\\_Submission\\_review\\_building\\_regs\\_final.pdf](https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_final.pdf)

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

- Yes  
 No

Please Explain

Yes. NFCC support the proposed duties for the accountable person and believe that consideration should be given to extending all of them to the RP in higher-risk workplaces. This would help to avoid a two-tiered system between buildings in scope that have an accountable person and the higher-risk workplace buildings with an RP. This would also assist in supporting FRSs in regulatory activity, as there would be no ambiguity surrounding the person responsible for fire safety and their duties.

By implementing the requirement for a named accountable person, the FSO would further support safety in such buildings, as it would be more likely that risk would be 'owned' within the buildings. This could work along similar lines as the need for a 'registered manager' that already exists in care premises.

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

- Yes  
 No

Please Explain

Yes. NFCC support the principle of a safety case regime in higher-risk workplaces. However, the FSO gives FRSs the powers to enforce in the whole building. NFCC believe that new higher-risk workplaces should go through the Gateways and all premises through the Golden Thread process. If this occurred, then the premises may require less scrutiny once occupied.

For existing higher-risk workplaces, increased use of Article 24 (the power to make regulations) and Article 29 (alterations notices) could ensure that higher levels of protection are specified to protect the most vulnerable.

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

- Yes  
 No

Please Explain

Yes. The proposal to create a 'Golden Thread' of information would be useful if applied to all workplace buildings, as it would help to ensure that the RP always had access to information relating to the fire safety aspects of their premises.

**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'?**

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please Explain</b>
<p>Yes. NFCC endorse the inclusion of fixed penalty notices as an additional enforcement tool under the FSO. This would facilitate an additional method of addressing low level persistent offences by FRSs. We would recommend this sanction for all buildings regulated under the FSO, not just ‘higher-risk workplace buildings.’ Consideration could also be given to introducing fixed penalty notices for ‘failure to comply with enforcement notices’”</p> <p>NFCC would also recommend the equivalent minimum requirements for the RP as for an accountable person. This should include ensuring that FRSs have an address in England or Wales for the purposes of serving notices; that the RP must ensure that those they employ to manage the building are competent and have sufficient funds to carry out their functions. Where the RP is a legal entity there should be a single accountable person at board level. This aspect should assist FRSs in more easily identifying the RP going forward.</p> <p>In addition, NFCC consider that the transfer of information through a safety case and Golden Thread of information should lead to a more robust regulatory landscape, as would mandatory occurrence reporting and whistleblowing. NFCC would welcome these additions to encourage compliance.</p>

<p><b>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’?</b></p> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please Explain</b>
<p>Yes.</p> <p>NFCC believe that higher-risk workplaces need to be part of the new regime at planning, design and construction phase to ensure these buildings are built correctly to begin with.</p>