



Guidance Document

Full Title

**'Collected Perceived Insights Into
and Application of**

The Regulatory Reform (Fire Safety) Order 2005'

For the Benefit of Enforcing Authorities and others

A Completely Unofficial Guide to the Meaning of the Regulatory Reform (Fire Safety) Order 2005
(including the amendments made by the Fire Safety Act 2021 and other Acts and Regulations that have
amended the Order)

(Common Title: 'Enforcers' Guidance')

2023 Revision

Purpose and Disclaimer

The purpose of this guidance document is to provide enforcing authorities (and others) with a standardised approach to the articles contained within the Regulatory Reform (Fire Safety) Order 2005 (the Order) as amended, in the interests of promoting consistency of application and understanding. It should be consulted together with the Order itself and the associated Regulations made under article 24, not instead of them. The guidance is founded upon current understanding and legal precedent (when applicable). It remains self-evident that any definitive interpretation of the Order will be made by the courts.

Whilst CPL Publications Limited ('CPL') co-ordinated the original preparation of this guidance document in good faith, the document has been maintained up to date by Jonathan Herrick (as the principal author and editor of the original). Nothing in this guidance document constitutes advice or professional advice by CPL, the authors or other contributors. In relation to any particular matter or circumstance, advice from a suitably qualified professional should always be sought. CPL, the authors and contributors shall not be liable for any loss or consequential damages whatsoever arising out of or in connection with the content of this guidance document or its use.

Status of Document

This document is intended to offer an ongoing, contemporaneous and progressive view of the Order. As the courts make decisions as to the meaning of the various articles and requirements of the Order, it is intended that this document will be updated to reflect those decisions. Updates from contributors are welcome at any time. Clear interpretation provided by the courts will be identified with other updates in a Table of Amendments to this document until a full review takes place. In any case a review of this document is intended to be undertaken on a three-yearly basis.

Guidance Note 1¹, issued by the Department for Communities and Local Government continues to be the statutory guidance for enforcing authorities, together with other Guidance Notes from government departments that address Regulations and other legislation that influences or amends the Order. The interpretation and guidance given in this document is provided in addition to Guidance Note 1 (and others) and not instead of the information provided therein.

Having been originally produced by the Enforcement Working Group of the Chief Fire Officers Association (in 2010), this document was first intended to provide an additional source of information to enforcing authorities, in pursuit of providing a consistent approach to the meaning of the Order. It aims to provide detailed information, based on experience and practical application, to assist all in meeting their respective responsibilities. This (2024) version may be 'less official' than its predecessors because it now produced as a 'labour of love' by Jonathan Herrick, since CFOA / NFCC stopped supporting further reviews. It remains a free to access document and contributions (including amendments, comments and corrections) are welcomed and encouraged from readers and interested parties.

¹ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

Enforcing authorities should have regard to the principles of 'As Low As Reasonably Practicable'; the Hampton Principles² and principles of Better Regulation; the Regulators' Code³; and the Regulatory Enforcement and Sanctions Act⁴, among others, some of which are referred to directly within the pages of this document.

It is hoped that this non-statutory guidance will help to promote uniformity of application of the Order. However, only the courts can give a binding interpretation on a point of law. Anyone choosing to use this guide should bear this in mind and make it clear when applying the guidance contained herein.

Review

This document should be subject to a review every three years from the date of formal publication (21/04/2011) so that it can be updated with new learning together with new case law and best practice. The latest review was undertaken in 2023 and subsumed all previous amendments. Whenever further case law supports this document, a reference will be included in the relevant areas of the document as a part of the review. Where case law contradicts the information in this document, the document will be amended as soon as is practicable, after it becomes clear that the outcome of the hearing will not be subject to appeal / further appeal.

Since the last three yearly review, new laws and various amendments to existing laws have been made to address the findings resulting from the tragedy at Grenfell Tower and a new regulator has been appointed, based in the Health and Safety Executive. While all this work will have an impact on enforcing authorities under the Order, the Order remains extant but subject to amendments. Those amendments are reflected in this guidance. Further amendments and changes to this document will continue and will be captured in the table of amendments.

Readers should note that the support of CFOA (now NFCC) for further reviews of this document were not supported. A new sponsor, capable of providing the academic rigour and scrutiny this document demands is being sought. As the principal author and editor of this document, Jonathan Herrick is determined to maintain the currency of this guidance until it is no longer necessary / useful or until a new sponsor is found. Since 2019, the most up-to-date version of this guidance is produced in relative isolation and made available as a free download on the web site: www.herrickfire.co.uk. The same rigour is applied as was previously the case, but it must be noted that there is no longer involvement from CPL or other past contributors, unless they offer input or constructive commentary. It is therefore of high importance that, if any reader should feel that some aspect of this guidance is incorrect (or lacking) in any way, they send a message to Jonathan Herrick as soon as the reader can make it convenient to do so. Email communications should have the words 'Enforcers' Guidance' in the subject line and the message should be addressed to jonathan@herrickfire.co.uk. Changes will be made, subject to readers' observations and

² Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005.

³ Better Regulation Delivery Office. *Regulators' Code – Statutory Code of Practice for Regulators*, [online], April 2014, London: Department for Business Innovation and Skills. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf [Accessed 24 November 2014]

⁴ Regulatory Enforcement and Sanctions Act 2008, Ch 13

supporting evidence and will be reflected in the Table of Amendments, as before. Thanks go to all those who have contributed to this guidance at any time and in any capacity – this guidance stands on the shoulders of giants in the fire industry.

Thank you.

Table of Amendments

This table is empty, pending the first amendment since the release of the 2019 version of this guidance

Date	Location in document	Brief description	Amended by
13.03.2019	p. 153, 2nd para.	Correction of typographical error in connection with the example of a changed fire door to a flat.	J Herrick / N Avery
13.03.2019	p. 44, last paragraph	Clarification of owner responsibility to assess in multi-occupied buildings.	J Herrick / N Avery
13.07.2022	Article 6 (FSO and FAQs); article 50 (FSO, guidance and FAQs)	Amendments made by the Fire Safety Act 2021 Ch 24, under commencement regulations in Wales by Welsh SI 2021 No. 1092 (in force 1 October 2021); and in England by SI 2022 No. 544 (in force 16 May 2022)	J Herrick
15.07.2022	Article 25 (1)(e)(iii) to (e)(ix) - FSO	Amendment to the Order made by the Regulatory Reform (Fire Safety) (Custodial Premises) Subordinate Provisions Order 2018	J Herrick
20.07.2022	Article 25 – re- numbering, erasures, and additions as a result of amendments made by the Energy Act 2013 (FSO, guidance, and FAQs). Also, amendments to article 26 (3)	Amendment to the Order made by paragraphs 87 and 88 of Part 5, Schedule 12 of The Energy Act 2013 (2013 c.32). Inserts of “Office for Nuclear Regulation”	J Herrick
20.07.2022	Guidance notes to article 31(10)	Additional information on the meaning of premises consisting of or comprised in a house which is occupied as a single private dwelling.	J Herrick
20.07.2022	NEW— Appendix 5	NEW— Guidance for Regulations made by the Secretary of State under article 24	J Herrick
22.07.2022	Article 25 FAQ	FAQ with respect to amendments brought about by the Energy Act 2013	J Herrick
30.09.2023	Articles 5, 9, 9A, 11, 21A, 22, 22A, 22B, 29, 32, 50	Updates brought about by Section 156 of the Building Safety Act 2022	J Herrick
30.09.2023	Article 45 and 52	Omitted by paragraph 90, Schedule 5 of the Building Safety Act 2022	J Herrick

30.09.2023	Article 22A(3)	Insertion of sub-paragraph (ea) by The Building (Higher-Risk Buildings Procedures)(England) Regulations 2023	J Herrick
7.10.2023	Article 9	Correction of typing error.	J Herrick
26.06.2024	Article 9A	Added text to clarify the status of the article.	J Herrick

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PART 1 GENERAL

Article 1—Citation, commencement and extent

The Regulatory Reform (Fire Safety) Order 2005

Citation, commencement and extent

1. —(1) This Order may be cited as the Regulatory Reform (Fire Safety) Order 2005 and shall come into force in accordance with paragraphs (2) and (3).

(2) This article and article 52(1)(a) shall come into force on the day after the day on which this Order is made.

(3) The remaining provisions of this Order shall come into force on 1st April 2006.

(4) This Order extends to England and Wales only.

Article 1 Guidance Notes

The Order came into force on 1st October 2006⁵ to allow for the construction of guidance for responsible persons prior to its implementation. The delay also assisted a combined release of similar laws in other parts of the UK.

Article 1 FAQ

No questions have been raised in relation to this article at this time.

⁵ See S.I. 2006, no. 484 - the first amendment to the Order

Article 2—Interpretation

The Regulatory Reform (Fire Safety) Order 2005

Interpretation

2. In this Order—

"alterations notice" has the meaning given by article 29;

"approved classification and labelling guide" means the Approved Guide to the Classification and Labelling of Dangerous Substances and Dangerous Preparations (5th edition) approved by the Health and Safety Commission on 16th April 2002;

"the CHIP Regulations" means the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002;

"child" means a person who is not over compulsory school age, construed in accordance with section 8 of the Education Act 1996;

"dangerous substance" means—

(a) a substance or preparation which meets the criteria in the approved classification and labelling guide for classification as a substance or preparation which is explosive, oxidising, extremely flammable, highly flammable or flammable, whether or not that substance or preparation is classified under the CHIP Regulations;

(b) a substance or preparation which because of its physico-chemical or chemical properties and the way it is used or is present in or on premises creates a risk; and

(c) any dust, whether in the form of solid particles or fibrous materials or otherwise, which can form an explosive mixture with air or an explosive atmosphere;

"domestic premises" means premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling);

"employee" means a person who is or is treated as an employee for the purposes of the Health and Safety at Work etc. Act 1974 and related expressions are to be construed accordingly;

"enforcement notice" has the meaning given by article 30;

"enforcing authority" has the meaning given by article 25;

"explosive atmosphere" means a mixture, under atmospheric conditions, of air and one or more dangerous substances in the form of gases, vapours, mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture;

"fire and rescue authority" means a fire and rescue authority under the Fire and Rescue Services Act 2004;

"fire inspector" means an inspector or assistant inspector appointed under section 28 of the Fire and Rescue Services Act 2004;

"general fire precautions" has the meaning given by article 4;

"hazard", in relation to a dangerous substance, means the physico-chemical or chemical property of that substance which has the potential to give rise to fire affecting the safety of a person, and references in this Order to "hazardous" are to be construed accordingly;

"inspector" means an inspector appointed under article 26 or a fire inspector;

"licensing authority" has the meaning given by article 42(3);

"normal ship-board activities" include the repair of a ship, save repair when carried out in dry dock;

"owner" means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent;

"personal protective equipment" means all equipment which is intended to be worn or held by a person in or on premises and which protects that person against one or more risks to his safety, and any addition or accessory designed to meet that objective;

"place of safety" in relation to premises, means a safe area beyond the premises.

"premises" includes any place and, in particular, includes—

(a) any workplace;

(b) any vehicle, vessel, aircraft or hovercraft;

(c) any installation on land (including the foreshore and other land intermittently covered by water), and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and

(d) any tent or movable structure;

"preparation" means a mixture or solution of two or more substances;

"preventive and protective measures" means the measures which have been identified by the responsible person in consequence of a risk assessment as the general fire precautions he needs to take to comply with the requirements and prohibitions imposed on him by or under this Order;

"prohibition notice" has the meaning given by article 31;

"public road" means a highway maintainable at public expense within the meaning of section 329 of the Highways Act 1980;

"rackrent" in relation to premises, means a rent that is not less than two-thirds of the rent at which the property might reasonably be expected to be let from year to year, free from all usual tenant's rates and taxes, and deducting from it the probable average cost of the repairs, insurance and other expenses (if any) necessary to maintain the property in a state to command such rent;

"the relevant local authority", in relation to premises, means—

(a) if the premises are in Greater London but are not in the City of London, the London Borough in the area of which the premises are situated;

(b) if the premises are in the City of London, the Common Council of the City of London;

(c) if the premises are in England in a metropolitan county, the district council in the area of which the premises are situated;

(d) if the premises are in England but are not in Greater London or a metropolitan county—

(i) the county council in the area of which the premises are situated; or

(ii) if there is no county council in the area of which the premises are situated, the district council in that area;

(e) if the premises are in Wales, the county council or county borough council in the area of which the premises are situated;

"relevant persons" means—

(a) any person (including the responsible person) who is or may be lawfully on the premises; and

(b) any person in the immediate vicinity of the premises who is at risk from a fire on the premises,

but does not include a fire-fighter who is carrying out his duties in relation to a function of a fire and rescue authority under section 7, 8 or 9 of the Fire and Rescue Services Act 2004 (fire-fighting, road traffic accidents and other emergencies), other than in relation to a function under section 7(2)(d), 8(2)(d) or 9(3)(d) of that Act;

"responsible person" has the meaning given by article 3;

"risk" means the risk to the safety of persons from fire;

"risk assessment" means the assessment required by article 9(1);

"safety" means the safety of persons in respect of harm caused by fire; and "safe" shall be interpreted accordingly;

"safety data sheet" means a safety data sheet within the meaning of regulation 5 of the CHIP Regulations;

"ship" includes every description of vessel used in navigation;

"special, technical and organisational measures" include—

(a) technical means of supervision;

(b) connecting devices;

(c) control and protection systems;

(d) engineering controls and solutions;

(e) equipment;

(f) materials;

(g) protective systems; and

(h) warning and other communication systems;

"substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour;

"visiting force" means any such body, contingent, or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;

"workplace" means any premises or parts of premises, not being domestic premises, used for the purposes of an employer's undertaking and which are made available to an employee of the employer as a place of work and includes —

(a) any place within the premises to which such employee has access while at work; and

(b) any room, lobby, corridor, staircase, road, or other place —

(i) used as a means of access to or egress from that place of work; or

(ii) where facilities are provided for use in connection with that place of work,

other than a public road;

"young person" means any person who has not attained the age of 18.

Article 2 Guidance Notes

'Adequate' – Sufficient for the purpose stated.

'Appropriate' – this term, when taken together with “Where necessary (whether due to the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances) in order to safeguard the safety of relevant persons ...” introduces the concept of scale and complexity to risk assessment under the Order. For example, a small premises (compliant with current UK building codes) is unlikely to require further consideration; whereas a large/complex building containing fire engineered solutions, will fall subject to greater scrutiny within the meaning of these articles due to the ‘features of the premises and other relevant circumstances’. Therefore, what is appropriate for one premises may not be appropriate for the next and as such the risk assessment methodology is supported.

'Child' – a person who is not older than the compulsory school leaving age (up to and including the last Friday in June in the academic year when the child attains the age of 16 years).

'CHIP regulations' – the most up to date version of these regulations is The Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 2008, which came into force

on 1 October 2008. The regulations implement European Commission Directive 2006/8/EC, commonly known as the second Adaptation to Technical Progress of the Dangerous Preparations Directive (the 2nd ATP), bringing it into domestic legislation.

‘Competent Person’ – the Order clearly states that there are two means by which competent persons might be identified. He⁶ must have both ‘sufficient training *and* experience’ or alternatively he must possess ‘knowledge *and* other qualities’, which will in both cases, enable him to properly carry out the task at hand. The nature of ‘competent person’ is clearly associated with ‘competence’. The qualities present in the person must be akin to those expected of any person in that profession, but will by definition be limited by training, experience, knowledge or other qualities; in accordance with the complexity of the task at hand. It follows that as a task increases in complexity, so the expected ability of the competent person will also increase.

Displaying an awareness of the requirements does not inherently meet the requirements of the role. “... when relevant competencies are absent, it shows in the end result and this, as the recent case [Lockwood⁷] shows, is proof enough for the courts ... The guidance associated with the [Management of Health and Safety at Work Regulations 1999] makes it clear that the level of knowledge and experience involved must be tied to the complexity of the problems to be tackled.”⁸ Whatever the level of ability, the competent person must be able to identify a problem when he sees it and must be suitably able to assess the relative importance of that defect in relation to the safety systems in place to satisfy the requirements of law and the premises. This person should be sufficiently familiar with relevant codes and standards (through experiential or formal learning, underpinning knowledge and an ability, when called upon to answer relevant questions) to be able to deal with the matter at hand e.g. the installation or maintenance of a fire alarm system.

‘Domestic Premises’ – this matter is intended to refer to the stereotypical ‘Englishman’s home is his castle’ arrangement.

With regard to domestic premises, these are ‘premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling). The wording in parentheses is of particular importance. By excluding from the definition parts of premises that are used in common by the occupants of more than one dwelling, common parts of blocks of flats and similar premises, such as houses in multiple occupation, are brought within the scope of the Order and as such all relevant articles apply to those parts.

⁶ Subject to the Interpretation Act 1978, Chapter 30, Section 6(a), in this document words importing the masculine gender include the feminine

⁷ HSE, *Benchmarking the competent person in manufacturing and engineering sectors*, Research Report 121, [online], 2003, Suffolk, HSE, available from: <http://www.hse.gov.uk/research/rrpdf/rr121.pdf> [Accessed 24 November 2014], p7, HSE v Lockwood (2001)

⁸ HSE, *Benchmarking the competent person in manufacturing and engineering sectors*, Research Report 121, [online], 2003, Suffolk, HSE, available from: <http://www.hse.gov.uk/research/rrpdf/rr121.pdf> [Accessed 25 November 2014], paragraph 3.3.2

It should also be noted that, by virtue of article 31(10), a prohibition notice may be served on e.g. a house in multiple occupation and that the scope of the notice does not have to be limited purely to the common parts of the premises. Similarly, articles 17(2) & (3); and 38(2) & (3) may require action by the responsible person and therefore provide the responsible person with supposed rights of access⁹.

The Order does not apply to single private dwellings used entirely as the main residence of, and which is occupied by, a single person or single household; i.e. none of the articles apply.

Matters relating to domestic premises can become complicated with the variation in premises used as a dwelling and the nature and inter-relationship between occupants of such dwellings. It may be necessary to consult legal advice for matters relating to 'domestic premises' because the interpretation of this area of law is complex. Further information relating to the interpretation of Domestic Premises is given at article 31 to this document and in Appendix 1 to this document. Article 31(10) may apply to flats which form part of premises which comprise commercial as well as domestic uses, but careful consideration should be given to duties imposed on each party before enforcement action is taken (see article 31 of this document for further information). It should be noted that the Order has regard to how premises are occupied and not for example some previously agreed or designated use. This implies that for example a commercial building, being used as domestic premises by a single household, may fall outside the scope of the Order.

For the purposes of clarity, the front doors to flats are considered to be a common protective measure, typically under the control of the occupier as an article 5(4) duty holder, because an early failure of the door can pose a serious risk to the safety of other relevant persons on the premises (see Appendix 1 Implications of the Order as it applies to Flats in this document for further information).

'Employee' – "means an individual who works under a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing), and related expressions are to be construed accordingly; see also sections 11(3)(a), 12(2) and 13(3) (which apply for the purposes of section 2);"¹⁰ [An express contract is one in which the terms are stated in words. An implied contract is one in which the existence and terms are manifested by conduct.]

A judgement may have to be made about ... "the status of volunteers, as in the case of many charitable organisations who use them to operate their shops and raise funds. Where such persons are involved a reasoned judgement should be made about whether there is a form of employment contract (written, oral or implied). It should be borne in mind that payment is not necessary for a contract to be valid. It is usual for there to be a form of recompense for a service provided but the form of recompense can vary significantly. Some volunteers may

⁹ House of Commons Regulatory Reform Committee, Draft Regulatory Reform (Fire Safety) Order 2005 Ninth Report of Session 2004-05 Report, together with formal minutes and written evidence, HC 495, [online], 2005, London, The Stationery Office Limited, Available from: <<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmdereg/495/495.pdf>> [Accessed 24 November 2014], para.31

¹⁰ The Corporate Manslaughter and Corporate Homicide Act 2007, Section 25 - Interpretation

therefore need to be considered as employees.”¹¹ In cases of doubt legal advice should be sought.

Where persons are termed an employee, they will be subject to all the relevant articles as they apply to employees.

‘House occupied as a single private dwelling’ – used entirely as the main residence of, and which is occupied by, a single person or single household; the Order does not apply i.e. none of the articles apply. More information on this subject can be found in Appendix 1. The term ‘private’ is an operative word in this context and in situations for which privacy is (or can be said to have been) ‘lost’, then the Order may apply. The matter of privacy may be especially of importance when considering the application of the Order to assisted / supported living accommodation (see Appendix 1).

‘Owner’ – legal advice may be required to identify the owner. Furthermore, note should be taken of the information provided relating to the term ‘owner’ at article 3.

“Inclusion of “the owner” in the definition means that empty buildings are brought within the scope of the Order; for instance, a new building which has received Building Regulations approval, but has not yet been occupied. They would now be under a duty to carry out a risk assessment [where relevant persons may be at risk], but this would largely involve ensuring that the building was secure [from fire]. The owner is the person who receives the rack-rent of the premises in question, or the person who would receive the rack-rent if the premises were let at a rack-rent.”¹² For rack-rent read ‘an amount not less than two-thirds of the market rent at which the property could be let once all deductions relating to repairs, taxes, rates, other expenses which are necessary to maintain the property in good order’.

‘Place of safety’ – safe area beyond the premises where relevant persons are no longer at risk from fire. “ODPM would draw to the Committee’s attention that under the Order as drafted, it is necessary for the responsible person to consider the risk to persons in and around any place for which they have responsibility. Consequently, provision of means of escape from the premises to a place of safety could not result in the means of escape ending in an area in the vicinity of the premises where relevant persons would still be at risk in case of fire.”¹³

¹¹ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, 2007, paragraph 101

¹² GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, Amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002*, London, The Office of the Deputy Prime Minister 2002, p19, 4.12

¹³ House of Commons Regulatory Reform Committee, *Proposal for the Regulatory Reform (Fire Safety) Order 2004, Eleventh Report of Session 2003-04, Report, together with formal minutes, written and oral evidence, HC 684*, [online], 2004, London, House of Commons, Available from: <<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmdereg/684/68402.htm>> [Accessed 24 November 2014], EV33

It should be noted that refuges and protected control rooms in COMAH sites may be seen as a place of safety in accordance with those regulations but where danger from fire may still exist, the Order suggests that this may not be the case.

‘Preventative and protective measures’ – are interchangeable with the term ‘general fire precautions’.

‘Relevant persons’ – the true meaning of ‘relevant persons’ is difficult to determine precisely, and the potential scope is such that persons affected by a smoke plume may be included or the meaning might be limited to being affected by flame and / or falling debris. The duty imposed on the responsible person in relation to relevant persons (lawfully¹⁴ on the premises or in the vicinity of them) is to take general fire precautions to ensure that the premises (or ‘place’) is safe. This notion includes the responsible person and employees as well as those persons lawfully on the premises. It is clearly stated at article 5(5) that the articles with which the responsible person must comply require only the “taking or observance of general fire precautions in respect of relevant persons.” i.e. measures associated only with the premises but intended to protect persons somewhere beyond the premises e.g. where windows are expected / designed to fail (or otherwise fall away from a building), consideration must surely be given to the final destination of the resulting projectile. At this point the enforcing authority could consider the concept of relevant persons being somewhere beyond the premises. For existing premises, the duty-holder should consider the impact of fire on all those lawfully on the premises and those in the ‘immediate vicinity’ of the premises. It is probable that the weight of the duty owed to relevant persons will diminish with geographical proximity of the relevant person to the premises.

Previous rulings and judicial precedent imply that relevant persons should be afforded protection from harm arising on premises and that the duty is owed by the responsible person. Case law seems to support that this duty is owed to persons affected by fire beyond premises, if they suffer harm by it.

For a case claiming for damage or loss caused by smoke, the arguments are less clear but persuasive precedence¹⁵ suggests that these cases too may hold the responsible person responsible for the welfare of persons beyond the premises. How far beyond the premises this welfare should extend is likely to depend on the circumstances of the case. Further information relating to the interpretation of relevant persons is given at Appendix 4 to this document.

Fire-fighters engaged in activities under Sections 7, 8 and 9 of the Fire and Rescue Services Act 2004 are not relevant persons.

‘Risk’ – contrary to the guidance issued for responsible persons, this guidance borrows its interpretation of ‘Risk’ from the Health and Safety Executive; “the risk is the chance, high or low, that somebody could be harmed ... together with an indication of how serious the harm

¹⁴ In addition to the common concept of unlawful presence on premises, see the Occupiers Liability Act 1957 (c. 31), Sec 5(3)—if the use of premises is not permitted under tenancy, then persons present due to that tenancy are not lawfully on the premises

¹⁵ Sterling-Winthrop Group Ltd v Allan, 1987 S.L.T. 652

could be.”¹⁶ Therefore ‘risk’ is a combination of the likelihood (of fire) and the consequences (of fire) being realised.

The term ‘risk’ may be read as a strict definition referring only to fire i.e. combustion or spread of flame. It excludes the effects of fire (like smoke, radiant heat, buildings left structurally unsafe following a fire etc) when those effects escape the premises. The risk from fire and from the effects of fire is appropriate while those effects are in the premises because persons cannot be safe when threatened by fire or any harm derived from it.

‘So Far As Is Reasonably Practicable’ and ‘As Low As Reasonably Practicable’ – The assessment-based approach of the Order and its primary aim to reduce risk and then to protect relevant persons from any remaining risk introduces the principles of ‘as low as reasonably practicable’ (ALARP) and ‘so far as is reasonably practicable’ (SFAIRP). These terms are well known within Health and Safety law and are to be adopted within this guide. The principle of ALARP makes the following suggestions:

“... often [there is] only a limited number of options for dealing with a particular ... safety issue and the optimum option is in many cases likely to have been already established as relevant good practice accepted ... as reducing risks ALARP. Often ... staff will be able to rely on authoritative documented sources of good practice ...

... acceptance of good practice (should be kept) under review since it may cease to be relevant with the passage of time; new legislation may make it no longer acceptable; new technology may make a higher standard REASONABLY PRACTICABLE. Similarly ... duty-holders [should be expected] to keep relevant good practice under review.”¹⁷

It can be seen how this principle relates to the Order. The expectation may be that fire safety issues can be addressed using commonly accepted solutions, but the review process and adaptation to technical progress should be kept in mind, since developments might change what is good practice or reasonably practicable. Where the risk reduction measures appropriate to the features of the premises are not straight forward additional measures will be necessary. Under the ALARP principle, cost benefit analysis and gross disproportion also play their part in determining whether further risk reduction should be carried out. In most cases the required measure should be carried out unless the costs in time, effort or money are grossly disproportionate to any benefit gained.

“The definition set out by the Court of Appeal (in its judgment in Edwards v. National Coal Board, [1949] 1 All ER 743) is:

“‘Reasonably practicable’ is a narrower term than ‘physically possible’ ... a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between

¹⁶ Controlling the risks in the workplace [online], London, Health and Safety Executive Available from: <<http://www.hse.gov.uk/risk/controlling-risks.htm>> [Accessed 24 November 2014].

¹⁷ Health and Safety Executive. *HSE principles for Cost Benefit Analysis (CBA) in support of ALARP decisions*, [online], 2005b, London: Health & Safety Executive, Available from: <http://www.hse.gov.uk/risk/theory/alarp1.htm#P130_16948> [Accessed 24 November 2014]

*them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them.*¹⁸

The expectation is that the preventive / protective measure will be taken. The onus is on the duty holder to show that in taking the measure, the cost would have been grossly disproportionate to the benefits that would have been achieved. In the view of the Health and Safety Executive, ALARP and SFAIRP call for the same set of tests to be applied. While the concept of the two terms are interchangeable, the terms are not, as in any investigation or laying of informations, the particular term (as cited in the law) must be employed¹⁹, and the same stance is to be taken by this guidance.

‘Suitable and Sufficient’ – Enforcing authorities should note that the requirement for suitability and sufficiency is one and the same requirement as that in health and safety law. Detailed advice has been produced by the Health and Safety Commission as part of the *Approved Code of Practice and Guidance* to accompany the *Management of Health and Safety at Work Regulations 1999* (ISBN 0-7176-2488-9). That guidance is equally applicable to the suitability and sufficiency of risk assessments under the Order²⁰ and this approach has been adopted in this document.

The above ACOP also describes the term suitable and sufficient risk assessment as meaning one that:

- Identifies significant risks arising out of [the undertaking];
- Enables the employer to identify and prioritise the measures that need to be taken to comply with [the requirements of the Order];
- Is appropriate to the nature of the [undertaking]; and
- Remains valid for a reasonable period of time.

The question as to whether a control measure is suitable and sufficient will be measured by whether or not the minimum fire safety standard (‘life safety’) has been provided to which end reference to appropriate guidance or standard should be made.

‘Workplace’ – note should be taken of the impact of the term ‘made available’ on the meaning given. The mere presence of a room or part of a building does not mean that it is automatically classed as a workplace. Equally this term might be used to broaden the scope of the Order because the room or part of the building needs only to be ‘made available’ to employees for it to be classed as a workplace. Note should also be taken of the fact that ‘workplace’ also includes roads or other places used as a means of access to or egress from the premises.

¹⁸ Health and Safety Executive, *op. cit.*, 2005a, p.2

¹⁹ Ibid

²⁰ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, 2007

‘Where necessary’ – “... the caveat “where necessary” may allow the responsible person to decide that no fire-fighting equipment is necessary in his workplace ...”²¹ “Both the FBU and CPL considered that the level of discretion afforded by the inclusion of the words “where necessary” in article 14 was unacceptable.”²² The determination is that safety systems should be provided where they might be needed to protect people and that (conversely) safety systems are not necessary where their presence will not protect people.²³ By way of example, if a given hazard can be realised then it becomes necessary to deal with that eventuality. Requirements that contain this wording should link closely with the principles of ALARP and SFAIRP insofar that where more can be done to provide safety, then more should be done. It is for the responsible person to prove that to do more would be grossly disproportionate to the benefits of doing more. This document takes the stance that in the vast majority of premises it will be necessary, for example; for them to provide adequate fire-fighting equipment and to nominate competent persons to carry out fire-fighting measures, therefore in cases where responsible persons deem it un-necessary to provide such measures, it will be for the responsible person to present their case.

‘Young Person’ – although a young person has not yet reached the age of 18, it should be noted that this definition also incorporates persons who are defined as ‘child’. Therefore article 9(4) applies to any person under the age of 18 whereas article 19(2) applies to persons under the age of 16.

²¹ House of Commons Regulatory Reform Committee, *Proposal for the Regulatory Reform (Fire Safety) Order 2004, Eleventh Report of Session 2003-04, Report, together with formal minutes, written and oral evidence, HC 684*, [online], 2004, London, House of Commons, Available from: <<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmdereg/684/68402.htm>> [Accessed 25 November 2014],17

²² Ibid, p18

²³ Ibid

Article 2 FAQ

Owner -

Q. If a managing agent is collecting rent but passing it on to the legal owner, can he still be classed as owner under this?

A. In many cases the owner responsible person may not directly collect the rack-rent. Collection of the rent (and usually day-to-day responsibility for upkeep of the premises) may have been passed to an appointed agent. The agent will pass the rent (less their fees and costs) to the owner. Depending on the nature of the relationship between the owner and managing agent, either party could be held responsible for failures under the Order. The owner / managing agent is not held by the same strict liability as the employer responsible person (see article 3 of this document) and the responsibility is likely to rest with the party having the authority to rectify the failures.

In other cases, the owner may have the rent paid into a trust (used for the maintenance of the premises or similar functions). In these circumstances the rent is paid to the trustees. For cases in which the responsible person is the owner of premises, this can be read as a reference to the trustees. In this way the trustees may be treated as a Responsible Person(s).

Preventative and protective measures -

Q. Are preventative and protective measures just the same as the general fire precautions?

A. Yes, they are different ways of expressing the same thing - but noting that they are general fire precautions that have been identified by the responsible person's fire risk assessment as being necessary.

Relevant Persons -

Q. What is meant by immediate vicinity?

A. There is no fixed definition and the matter is subject to a subjective professional judgement according to the circumstances of the case. In making a professional judgement it will be necessary to consider the effect a fire may have and to consider all those who may be directly affected - that will be different if you are considering the local post office or considering the Buncefield petrol depot or other premises where significant quantities of dangerous substances are present and may be involved in a fire. Most fire-related case law²⁴ deals expressly with the spread of fire (flaming combustion) to determine liability. More recently Health and Safety law has found liability in a case of noxious fumes that overcame passers-by due to incorrect mixing of chemical products, albeit that those passers-by were on a different side of the wall to the mixing process. This might be influential on future fire safety cases, but this is something for the Courts to determine. Where the Buncefield fire caused the

²⁴ For the principles of the Liability For Fire see <http://www.lawteacher.net/PDF/Liability%20for%20Fire.pdf> [Accessed 25 November 2014], examples of liability cases include Balfour v Barty King, [1957] 1 All ER 156, and Op Cit H&N Emanuel Ltd v Greater London Council [1957] 1 QB 496

necessary evacuation of some 2,000 home owners (a question remains as to whether these people would be considered as 'relevant' under the Order) there is likely to be an element of foresight and 'injury' sustained, balanced against a 'nuisance' and as such it is possible that the Courts would not find that the 2,000 home owners were 'relevant persons'. However, for premises built with an inherent (fire engineered-based) reliance on windows failing in fire to ensure that fire does not spread to common areas of the premises; the persons at street level having the potential to be struck by the resultant projectile may be determined by the Courts to be relevant due to the designed nature of the foreseeable injury.

Q. Why are operational fire-fighters exempted but not other emergency services carrying out their function?

A. It was thought that it would be an excessive burden on business etc. to seek to make the responsible person responsible for the safety of fire-fighters when fighting a fire. Once the fire and rescue service is on the scene, the decisions about what fire-fighters do rests with the incident commander; and the responsible person for the premises cannot exercise control over that. It must be noted that fire and rescue personnel are relevant persons when not fighting a fire. Inspecting officers auditing premises under the Order and operational personnel carrying out information gathering under section 7(2)(d), 8(2)(d) or 9(3)(d) of the Fire and Rescue Services Act 2004 are included by the definition and are relevant persons.

Special Technical etc-

Q. In DSEAR this was known as work process why was this changed?

A. Process fire risk was not a defined term and over time the demarcation between process and general fire precautions had become very blurred. The definitions of general fire precautions and special and technical fire precautions contained in the Order were designed to place policy agreements between HSE and CLG on a statutory footing and so redraw the line as far as possible.

Article 3—Meaning of “responsible person”

The Regulatory Reform (Fire Safety) Order 2005

Meaning of "responsible person"

3. In this Order "responsible person" means—

(a) in relation to a workplace, the employer, if the workplace is to any extent under his control;

(b) in relation to any premises not falling within paragraph (a)—

(i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or

(ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.

Article 3 Guidance Notes

The responsible person concept is established, as a hierarchy, at article 3. The hierarchy consists of three elements with the first being the employer (where there is one), being given this responsibility to bring the Order into compliance with European Directives.²⁵ The other responsible persons (in descending order) are, where there is no employer, the person in control of the premises (in connection with a trade business or other undertaking whether for profit or not) and finally the owner. The inclusion of the second responsible person on the hierarchy is to increase the scope of fire law to include many more premises than had previously been included²⁶, such as voluntary sectors, places of religious worship, self-employed persons etc.

The employer is held by strict liability under the Order and will always be held to be the “responsible person” where the workplace is to any extent under his control. It is difficult to envisage an example whereby an employer does not have some form of control over the workplace. The very fact that a person decides to own a business or organisation which employs someone gives them a degree of control and therefore responsibility. Even if the

²⁵ House of Lords Delegated Powers and Regulatory Reform Committee, *27th Report of Session 2003-04 Proposal for the draft Regulatory Reform (Fire Safety) Order 2004*, HL 153, [online], 2004, London, The Stationery Office Limited, Available from: <http://www.publications.parliament.uk/pa/ld200304/ldselect/lddelreg/153/153.pdf> > [Accessed 25 November 2014], para.6

²⁶ GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, Amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002*, London, The Office of the Deputy Prime Minister 2002, p.19, para.4.16

employer has never visited the site and has put in place managers and administrators, he is still the responsible person because he has, to some extent, control over the people that work on the premises.

The person who has control – the inclusion of this stage in the hierarchy makes the person who has control of the premises for whatever reason the responsible person where the premises is not a workplace i.e. there is no employer. The inclusion of such persons in the hierarchy was to encompass premises that have no employer such as village halls, scout huts, charity shops (where there is no employer / employee relationship) and the like.

The owner – a key reason for adding “owner” at the bottom of the hierarchy is to cover such places as unoccupied premises²⁷ and to ensure that in every conceivable case there will always be a “responsible person” upon whom a notice can be served and has a legal responsibility to provide a duty of care to relevant persons.

When issuing notices, further information is provided at article 48 of this document.

Article 3 FAQ

Q. In relation to a workplace who is the responsible person if the employer does not have control?

A. It is hard to envisage a situation where the employer of persons who work in premises does not have control of the workplace “to any extent”. However, if such circumstances were found the next in line would be the person who has control of the premises as occupier or otherwise and; failing that, the owner.

Q. In the case of a limited company, who is the responsible person?

A. The responsible person will typically be the employer as for other employer / employee situations, but notices may be addressed to the ‘Company Secretary’ if a named individual cannot be found.

Q The care sector can be particularly difficult when it comes to determining, who is the responsible person. Let’s say that accommodation and care is provided in a single building but with some premises owned by the occupier, while others are rented from the scheme management and still others are spaces available for allocation by the Local Authority.

A. The care sector is particularly and increasingly complex (see article 6 FAQ on this subject). The start has to be the application of the Order to the premises in question i.e. to determine the primary use of the premises. If the premises are primarily used as domestic premises, article 6 tells us that the Order does not apply, except to the extent mentioned at article 31(10). In all likelihood the units occupied as domestic premises are not subject to the Order. This might mean that some vulnerable people

²⁷ GREAT BRITAIN, *op. cit.*, 2002, p.19

are left to evacuate their flat and the building, while workers in the building are under instruction to evacuate in case of fire. This situation requires consideration under two headings (at least). First the differential introduced by article 8 i.e. the duty owed to employees versus the duty owed to relevant persons who are not employees. Second is the consideration of various Coroner regulation 28 letters about the need for 'person-centred fire risk assessment'. This aspect has been dealt with under the NFCC publication 'Fire Safety in Specialised Housing'. The duty of care from an employer to his employee is absolute. This is not the case for non-employees. While the risk assessment should be person-centred, insofar as any person who poses a fire risk, and which might affect the fire safety of others should be considered as well as any special consideration necessary to afford suitable and appropriate protections for the individual so far as is reasonably practicable.

While the individual dwellings may not be subject to the Order, when principally occupied as domestic premises, the common areas are subject to the Order in full. The party responsible for the common areas will be accountable for the fire safety measures therein but the responsibility for the person-centred nature of the fire risk assessment will be a matter for the provider of care and may be subject to the reasonable sharing of information under article 22 – Cooperation and Coordination perhaps via article 20 – Provision of information to employers and the self-employed from outside undertakings in the spirit of a reasonable and necessary exchange of information.

Article 4—Meaning of “general fire precautions”

The Regulatory Reform (Fire Safety) Order 2005

Meaning of "general fire precautions"

4. —(1) *In this Order "general fire precautions" in relation to premises means, subject to paragraph (2)—*

(a) measures to reduce the risk of fire on the premises and the risk of the spread of fire on the premises;

(b) measures in relation to the means of escape from the premises;

(c) measures for securing that, at all material times, the means of escape can be safely and effectively used;

(d) measures in relation to the means for fighting fires on the premises;

(e) measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises; and

(f) measures in relation to the arrangements for action to be taken in the event of fire on the premises, including—

(i) measures relating to the instruction and training of employees; and

(ii) measures to mitigate the effects of the fire.

(2) The precautions referred to in paragraph (1) do not include special, technical or organisational measures required to be taken or observed in any workplace in connection with the carrying on of any work process, where those measures —

(a) are designed to prevent or reduce the likelihood of fire arising from such a work process or reduce its intensity; and

(b) are required to be taken or observed to ensure compliance with any requirement of the relevant statutory provisions within the meaning given by section 53(1) of the Health and Safety at Work etc 1974.

(3) In paragraph (2) "work process" means all aspects of work involving, or in connection with—

(a) the use of plant or machinery; or

(b) the use or storage of any dangerous substance.

Article 4 Guidance Notes

The general fire precautions are the ‘backbone’ of the Order, informing the responsible person of those measures that he will need to take to comply with its requirements. Some elements of the general fire precautions are dealt with in more detail in later articles.

However, it is worthy of note that the requirements at article 4(1)(a) centre about avoiding fire and passive measures taken to avoid its related spread. Article 4(1)(a) therefore makes requirements in respect of preventive measures (reduce the risk of fire) on the one hand and protective measures to keep people safe from fires that may be realised (reduce the risk of fire spread) on the other. Together with the requirement to mitigate the effects of fire at Article 4(1)(f)(ii); the Order is intended to offer reasonable protection to relevant persons. Consider premises that meet the full requirements for general fire precautions; what aspect of fire safety might lead to formal enforcement action? Where preventive and protective measures are in place to deliver safety in case of fire, such measures would inevitably deliver life safety, and “reduce the impact of fire on the environment, reduce property damage and reduce risks to fire fighters”²⁸.

The requirement to mitigate the effects of fire includes active intervention within its meaning implying that the presence of passive fire protection measures alone does not wholly satisfy the requirement. The provision and use of first-aid fire-fighting equipment is expected to be seen as more positive ‘action’ to satisfy the requirements of this article. During post-fire inspections / audits, where un-checked fire spread has occurred in premises; the measures taken by the responsible person to comply with the requirement to mitigate should be considered.

Articles 4(1)(a) to 4(1)(f)(ii) may be seen to fall into two broad categories. Some aspects of general fire precautions will be easily observable by the inspecting officer as a physical symptom of a failure to provide safety from fire. Examples of observable physical symptoms might include the presence or otherwise of fire alarm systems / detectors, emergency lighting, fire doors, protected staircases, holes through walls / doors etc. Other aspects of general fire precautions will not be observable but will require the inspecting officer to ask probing questions to ascertain principally the underlying cause for the failure to provide safety from fire. Examples of underlying causes might include fire prevention measures that have been taken, information and training provided to employees, mitigation of fire through management processes and fire safety arrangements etc. If inspectors can see that appropriate physical fire safety features are in place, the inspector might want to ascertain the sustainability of the measures seen; i.e. without the necessary monitoring and testing of those measures (among others) inspectors might reasonably foresee physical fire safety features falling into a state of disrepair, such that the longer-term safety from fire is not assured. Inspectors might also want to pursue questioning of the underlying causes to discover what led to observable failure in order to require improvement in the supporting management arrangements.

²⁸ GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, Amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002*, London, The Office of the Deputy Prime Minister 2002

In new buildings, observable general fire precautions are likely to have been provided as part of the building control process, in accordance with Approved Document 'B'²⁹ (and associated amendments subsequent to Grenfell Tower – England only) to the Building Regulations. Inspectors giving consideration to new buildings will confirm the presence of appropriate observable fire precautions but may want to pay particular attention to those general fire precautions that cannot be seen.

Some clarification of paragraphs (2) and (3) is given below:

General Fire Precautions do not include special, technical or organisational measures, i.e.:

- Technical means of supervision;
- Connecting devices;
- Control and protection systems;
- Engineering controls and solutions;
- Equipment;
- Materials;
- Protective systems; and
- Warning and other communication systems,

which are required to be taken or observed in a workplace in relation to the use of plant or machinery; or the use or storage of dangerous substances.

The use or storage of dangerous substances are expressly removed from the definition of general fire precautions (as given at article 4(2) by virtue of the meaning given to 'work process' at article 4(3)), where measures stated at 4(2)(a) and 4(2)(b) apply.

To consider this from an alternative perspective, general fire precautions will include measures taken in relation to dangerous substances where:

1. The premises are not a workplace (and therefore not regulated by the HSE or subject to the Health and Safety at Work etc Act 1974)
2. The dangerous substance is not being 'used' or 'stored' e.g. uncontrolled quantities of dust, giving rise to the potential for a dust explosion;
3. Special, technical or organisational measures³⁰ are required to be taken or observed in the workplace, if those measures have not been
 - i) Designed to prevent or reduce the likelihood of fire arising from the work process or reduce its intensity; or
 - ii) Required to be taken or observed to ensure compliance with the requirements of the 'relevant statutory provisions'³¹ within the meaning given by the Health and Safety at Work etc Act 1974.

²⁹ Fire Safety: Approved Document B, April 2006, HM Government ,ONLINE <https://www.gov.uk/government/publications/fire-safety-approved-document-b> Accessed 15 March 2019

³⁰ See article 2 for interpretation of these measures

³¹ "the relevant statutory provisions' means—

Note should be taken of the fact that for dangerous substances to fall outside the scope of general fire precautions both 4(2)(a) and 4(2)(b) must apply, but for general fire precautions to include measures relating to dangerous substances within their scope, either 4(2)(a) or 4(2)(b) do not apply.

In each case for the exclusions in the bulleted list (above), their purpose must be designed to prevent or reduce the incidence of fire and / or the intensity of fire; or are required to be taken by other Health and Safety legislation.

By way of example, consider an industrial fish fryer with an inherent cut-out through an automatic thermostat. This would qualify as a protective system to the fryer. The thermostat is provided under other Health and Safety legislation and as such does not constitute a general fire precaution. Where failures occur within the inherent safety device, remedial action falls under the jurisdiction of (typically) the Health and Safety Executive.

The provision for example of appropriate fire fighting equipment to deal with a fire in the fryer will constitute a general fire precaution.

The requirements and prohibitions imposed by articles 12 and 16 that relate directly to dangerous substances may be viewed as requirements of the Order which fall outside the scope of 'general fire precautions'.

A further example is a spray booth. The spraying equipment has in place a dead-mans handle. This would be a control and protection system provided by virtue of the fact that it is connected to a piece of machinery for the purpose of reducing the incidence of fire (thus falling under the description of 'special, technical or organisational measures'), and this would not therefore be a general fire precaution. By contrast, the imposition of very short travel distances in the spray booth is a general fire precaution.

Where doubt occurs as to the impact of the listed exclusions on general fire precautions or the presence of the dangerous substance on general fire precaution then, where possible, officers should seek to carry out a joint inspection / audit with the HSE. If a joint inspection is to be carried out, it must be borne in mind that the Health and Safety Executive may charge for their inspection services.

While the Order states³² that it gives effect in England and Wales to European Council Directives "the Chemical Agents Directive" and "the Explosive Atmospheres Directive" (as does DSEAR), their effect is limited *in so far as those provisions relate to general fire precautions...* Accordingly, where the presence of dangerous substances affects general fire precautions, the Order should be used to re-establish safety through the provision of suitable control measures, on the grounds that article 47 instructs that regulations made under the Health and Safety at Work etc. Act 1974 (such as DSEAR) shall not apply, if the remedy could be imposed by the Order. Where the matter relates to aspects of work involving 'the use of plant or machinery' or 'the use or storage of any dangerous substance', the Order does not apply (being a 'work process' in the meaning of general fire precautions at article 4) and is therefore a matter for DSEAR. This is consistent with the HSE, DSEAR: Approved Code of Practice and Guidance L138, 2nd ed., 2013, p12, which states:

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- a) The provisions of Part1 of the Health and Safety at Work Act 1974 and any provision of the Health and Safety Regulations and agricultural Health and Safety Regulations; and
 - b) The existing statutory provisions" – the Health and Safety at Work etc. Act 1974 (c. 37), Part I

³² See the Order, p 65, (e) and (f)

'Any general fire safety provision which could be imposed by regulations 1-6, 8, 9 and 11 of DSEAR is covered instead under this general fire safety legislation [the Order], with enforcement responsibility falling to the relevant authority, depending on the activity at the premises'

The mere presence of dangerous substances may have considerable implications for general fire precautions and must be considered under the Order. An example may be the drastically reduced travel distances required due to the presence of explosives in a premises. This should be dealt with under the Order as a general fire precaution, and the plant and machinery and the use of the explosives should be dealt with under DSEAR.

Article 4 FAQ

Q. Are paragraphs (2) & (3) solely for the HSE?

A. Article 4(2) and (3) – with the definition of special, technical or organisational measures in article 2 sets out the matters which are not considered to be general fire precautions under article 4(1). These matters are enforced by HSE under health and safety legislation.

Q. Is there a difference between “means for detecting fire ... and giving warning in case of fire” (at article 4(1)(e)) and “fire detectors and alarms” (at Article 13 (1)(a))?

A. Yes. The description of “measures in relation to means for detecting fire on the premises and giving warning in case of fire on the premises” as part of the definition of general fire precautions under article 4 means that all premises must have appropriate detection and warning arrangements (which could vary from detection by staff and a shout of “fire” to a full AFD system). This applies even if it is not necessary to have detectors and alarms (article 13) – i.e. an electrical fire detection and warning system. The inclusion in article 13 is mostly to demonstrate to the European Commission that the relevant element of a European Directive has been properly implemented in England and Wales.

Article 5—Duties under this Order

The Regulatory Reform (Fire Safety) Order 2005

Duties under this Order

5. —(1) *Where the premises are a workplace, the responsible person must ensure that any duty imposed by articles 8 to 22B or by regulations made under article 24 is complied with in respect of those premises.*

(2) *Where the premises are not a workplace, the responsible person must ensure that any duty imposed by articles 8 to 22B or by regulations made under article 24 is complied with in respect of those premises, so far as the requirements relate to matters within his control.*

(3) *Any duty imposed by articles 8 to 22B or by regulations made under article 24 on the responsible person in respect of premises shall also be imposed on every person, other than the responsible person referred to in paragraphs (1) and (2), who has, to any extent, control of those premises so far as the requirements relate to matters within his control.*

(4) *Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—*

(a) the maintenance or repair of any premises, including anything in or on premises; or

(b) the safety of any premises,

that person is to be treated, for the purposes of paragraph (3), as being a person who has control of the premises to the extent that his obligation so extends.

(5) *Articles 8 to 22B and any regulations made under article 24 only require the taking or observance of general fire precautions in respect of relevant persons.*

Article 5 Guidance Notes

This article details the requirements imposed on various persons and states what those duties are. It will be seen that the duties predominantly consist of complying with articles 8-22 but with subtle differences.

For workplaces i.e. there will be an employer and employees; the employer is responsible³³ for compliance in the premises.

For premises (or parts of premises) that are not workplaces i.e. no employer / employee relationship; the same articles must be complied with by the person having control³⁴, but

³³ See article 3—responsible persons

³⁴ Ibid

importantly this responsible person is not expected to necessarily provide compliance throughout the premises – only so far as the requirements relate to matters within his control. Therefore, where this responsible person has full control of the premises, he can expect to exercise that control by complying with the requirements; but where his control is limited, so is the level of compliance he is expected to achieve. Duty holders that have no employer / employee relationship may include for example: self-employed, those involved in charity work, community groups, risk assessors etc.

For those persons mentioned in sub-paragraphs (1) and (2) the duties imposed fall directly on responsible persons as stated at article 3.

For the sub-paragraphs (3) and (4), this article extends the concept of ‘the responsible person’ to persons that fall beyond the scope established at article 3. These persons may be seen as ‘quasi-responsible persons’. Requirements imposed on these quasi-responsible persons are made in addition to (not instead of) those imposed on defined responsible persons.

The ‘quasi-responsible person’ incorporates those:

- having control over premises³⁵; and
- with contracts³⁶ or tenancy agreements³⁷ in relation to the safety of premises, maintenance or repair of anything in or on the premises;

but in both cases, the responsibility extends only so far as the person has control or so far as his obligation extends.

By way of example, if the responsible person is misled by a report produced by a contractor that safety is delivered, when in fact safety is not delivered, the Order provides for the consultant to be liable to prosecution and not the responsible person.

A further example might be a multi-occupied office building in which each floor plate is occupied by a different employer. The building might be owned by another party who is not resident in the building and may be located remote from the building. For the sake of this example, the terms resident employers and building owner will be used. Resident employers are each responsible for their respective floor plate and also for seeing that the use of any common areas supports their fire safety requirements. The building owner will be responsible for the safety systems in the common areas, maybe just the staircase enclosure. If matters in the staircase require attention e.g. emergency lighting, the deficiency may be identified by resident employers, but the control may rest with the building owner (see article 22).

³⁵ ‘Control’ may extend, for example, to: managers who have responsibility within premises, but who are not the employer of those persons under his control; managing agents of premises; or simply those with the day-to-day occupation of the premises or activities carried on there but not the defined responsible person; etc.

³⁶ These persons are included to hold installers of safety systems to account where they hold the expertise but have failed in the provision of that safety system to the requisite standard e.g. fire alarm installers may be held responsible for those fire safety matters over which he has exercised control or for which he has an obligation.

³⁷ The nature of the tenancy agreement will require examination. Where a tenancy agreement incorporates reference to the safety of premises, the person having an obligation relating to a safety system (or general fire precaution), may be held responsible for that system/general fire precaution.

Article 5(4) has been tested in the case of *GMFRA v Morris* (fire alarm engineer), in which the engineer was found guilty of offences under the Order in connection with a lack of maintenance of the fire alarm system in a care home. Trafford Magistrates Court heard the case, and the sentence was passed at Manchester Crown Court. This case indicates the binding nature of the duties imposed on all duty holders established at article 5 and that enforcing authorities should enforce the Order on the most appropriate duty holder available to them.

A further case³⁸ has been brought, through Nottingham Crown Court, which brings the burden placed on quasi-responsible persons at article 5(4), into sharper relief. David Liu was prosecuted as the responsible person for two hotel premises (both in Mansfield) and John O'Rourke was prosecuted as an article 5(4) duty holder, within the obligations imposed on him as a fire risk assessor for the premises. Both men were sentenced to jail for a period of 8 months in addition to paying costs of £15,000 and £5,862.38 respectively. Having been heard at Crown Court the sentencing judge considered the sentencing as providing case law. This was the first prosecution held under the Order to result in the imposition of a custodial sentence.

Article 5(5) is most important as it sets out the standard to which compliance with the Order should be measured. The operative articles of the Order are often seen to be articles 8-22 and any regulations made under article 24, however article 5(5) establishes that articles 8-22 (etc) will have been complied with if general fire precautions have been provided to the extent that relevant persons are safe in case of fire. In other words, as long as general fire precautions are in place to deliver safety, the requirements and prohibitions of the Order have been met. Article 5(5) therefore establishes the spirit of the Order as life safety-based legislation and that premises must be 'safe enough' to adequately protect people from fire.

While it is acknowledged that the intention of the Order is to set the 'bar' at life safety; many requirements may be seen to exceed that bar. Consider the general fire precaution to limit the spread of fire (or to mitigate the effects of fire). The loss of a building to fire is a serious matter but (if everyone escapes safely) fire safety measures may be said to have been successful. In this case, the general fire precaution (to take measures to reduce the risk of the spread of fire) may not have been met. In fact, to take measures to reduce the risk of the spread of fire (or to mitigate the effects of fire) is a limiting effect on fire and may be seen to imply a degree of property protection (because if properly implemented, fires will not be allowed to grow). However, the Order does not extend this far. The extent of the requirements of the Order can be seen at article 32—Offences which is clear that (to paraphrase) it is an offence to fail to comply with a requirement where that failure places people at risk of death or serious injury in case of fire. Therefore, the destruction of a building by fire (and from which everyone safely escapes) is not an offence, and thus the 'bar' of life safety is maintained.

³⁸ R (Nottingham fire and rescue authority) v Liu and O'Rourke

Article 5 FAQ

Q. Can you explain the use of the word ‘tenancy’ and does this have impact on tenants in domestic dwellings in say a HMO?

A. The word has its usual dictionary definition and essentially means the right to occupy land or buildings as provided by the terms of a lease or other agreement. Because the Order does not apply to domestic premises (other than to the extent provided by article 31(10) and to a limited degree by articles 17 and 38) the effect for tenants of domestic premises in a HMO would be limited to the extent to which the tenant can exercise control over parts of the premises to which the Order does apply e.g. the common parts and potentially doors from flats that protect the means of escape.

Q. Responsibility and duty holders in public houses (pubs) is often difficult to determine; can any clarity be provided?

A. Pub chains often attempt to hide behind ‘full repairs’ leases and clauses which frequently indicate that the tenant is solely responsible for compliance with statutory requirements (including fire safety compliance).

Consider licensed premises, in which the exit route from domestic premises (on the upper floor) leads directly into the bar of a pub. Albeit that the pub chain might be aware of this fact, they frequently deny having any responsibility for the additional protective measures required to deliver safety in case of fire.

Non-binding legal argument in Magistrates Court regarding the serving of enforcement notices against such circumstances, have found that, although the responsible person as defined by Article 3, is the tenant, the pub chain may have retained responsibilities to maintain, to repair and to ensure safety within the premises.

In other cases, pub chains claiming to have no duties under the Order have subsequently carried out necessary improvements in pubs, especially in relation to ensuring that the means of escape enable persons to evacuate the premises as quickly and as safely as possible. By carrying these changes in to effect, the pub chain is demonstrating the control they have in relation to premises.

Q. If for example no fire risk assessment has been undertaken, but general fire precautions are in place, such that relevant persons will be safe in the event of fire in accordance with article 5(5), is the failure to have the risk assessment a failure under the Order?

A. If general fire precautions have been provided, such that relevant persons will be safe in the event of fire (i.e. ‘safe enough’) then the requirements of the Order have been satisfied. By meeting the spirit of the Order (to keep people safe from fire) articles 8-22 (etc) will have necessarily been satisfied (including the requirements at article 9). If, however general fire precautions have not been so provided, the failure to have undertaken an assessment to identify the general fire precautions required, will be a contributory factor (if not the driving reason) leading to the failure to provide safety from fire.

Article 6—Application to premises

The Regulatory Reform (Fire Safety) Order 2005

Application to premises

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

(a) domestic premises, except to the extent mentioned in paragraph (1A) or article 31(10);

(b) an offshore installation within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995;

(c) a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;

(d) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings;

(e) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act;

(f) a mine within the meaning of section 180 of the Mines and Quarries Act 1954, other than any building on the surface at a mine;

(g) a borehole site to which the Borehole Sites and Operations Regulations 1995 apply.

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

(a) the building's structure and external walls and any common parts;

(b) all doors between the domestic premises and common parts (so far as not falling within sub-paragraph (a)).

(1B) The reference to external walls includes—

(a) doors or windows in those walls, and

(b) anything attached to the exterior of those walls (including balconies).

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

Article 6 Guidance Notes

“... standards of safety in the home should continue to be governed by housing law. Housing authorities continue to be the primary enforcing authority for houses in multiple occupation, but fire authorities continue to play a key role in providing advice to housing authorities, particularly on fire precautions in licensed HMOs.”³⁹ Enforcing authorities should note that there exists a ‘Protocol between Local Housing Authorities and Fire and Rescue Authorities to improve fire safety’⁴⁰. This protocol has been signed by the Under Secretary of State with responsibility for Housing and that with responsibility for Fire Safety. Although the whole protocol should be of interest to enforcing authorities, there are two paragraphs that are of particular note here.

“Local Housing Authorities will, when taking enforcement action under the Housing Act 2004, have regard to the principles and requirements of the Fire Safety Order.”

and

“Local Housing Authorities will consider the full range of powers under the Housing Act 2004, including Emergency Prohibition Orders, where appropriate”.

Between them, these paragraphs may be seen to address issues relating to the Housing Health and Safety Rating System and fire related dangers, by giving weight to life threatening fire safety dangers in domestic premises and suggesting that Housing Authorities should subsequently consider the full range of enforcement powers within the principles and requirements of the Order.

Where premises such as flats or sheltered housing are places of direct employment, the Order applies in full to those premises to protect employees from fire. The scope of the Order does not encompass employment such as nannies or domestic cleaners in domestic premises.

This does not detract from the duty owed by employers, landlords and owners in terms of maintenance and testing of common fire precautions installed for the benefit of multiple occupants.

In general, the Order does not apply to domestic premises. However, Fire Authorities have the power to prohibit premises, including areas of domestic living accommodation (flats, private rooms in HMOs etc) situated in premises to which the Order applies, where serious risk is present.

Further information is provided in Appendix 1 to this document.

³⁹ GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002*, London, The Office of the Deputy Prime Minister 2002, p38

⁴⁰Chief Fire Officers Association, the National HMO Network, LACoRS, the CIEH and the National Landlords Association, *Protocol between Local Housing Authorities and Fire and Rescue Authorities to improve fire safety*, [online] 2007, London, Chartered institute of Environmental Health, Available from:
<http://www.cieh.org/uploadedFiles/Core/Policy/Publications_and_information_services/Policy_publications/Publications/Fire%20Protocol%20final.pdf>, [Accessed 25 November 2014]

Article 6 FAQ

Q. What is the appropriate application of the Order in a sheltered housing block, where care is not provided, i.e. individual residential flats with a part time manager, a common room and a common laundry for use by residents; and what guidance is available on the need to provide a Personal Emergency Evacuation Plan for each resident? [Question put to DCLG on behalf of a responsible person].

A. [(Abridged) response from DCLG] The Order applies only to the common or shared areas of blocks of flats, including those which are being used to provide sheltered housing accommodation. It does not apply to the individual domestic dwellings themselves; including where the resident is in receipt of individual care services.

The FSO is not prescriptive about the fire safety measures that need to be in place in these areas to achieve a suitable level of safety. This is a matter for the responsible person to consider as part of their risk assessment, which requires that risks to people are identified, with particular attention paid to those who may be especially at risk.

Local Government Improvement and Development (LGID) worked with DCLG, the housing sector and the Chief Fire Officers Association in (2011) to develop specific guidance for those with fire safety responsibilities (including the local enforcing authorities) in purpose-built blocks of flats. Although this was intended to be specific to general needs housing blocks, it was recognised by the housing sector that a number of the issues were applicable to purpose built sheltered accommodation, and guidance for this type of building was incorporated; including on evacuation strategies and the need for residents to know what to do in the event of fire. This guidance explains the [what has been known as] 'stay-put' concept and is available on the DCLG website at: www.communities.gov.uk/firesafety.

It should be noted that in this case, the residents of this particular block are assessed regularly for their ability to live unsupported; should support be required alternative appropriate accommodation is found for them. The Local Authority provides peripatetic assistance to some residents, which is common nationally for the elderly and physically and mentally impaired who live on their own within the community.

Q. Article 6(1)(c) is clear that the Order does not apply to ships under the stated conditions, but under what circumstances does the Order apply to water going vessels?

A. A Bulletin article released by the Department for Communities and Local Government seeks to clarify the application of the Order to boats; in particular narrow boats and cruisers primarily rented out for holiday or leisure purposes. The clarification is based on Communities and Local Government's current understanding.

The view held by Communities and Local Government is that the Order generally does not apply to boats hired for the purposes of holiday or leisure activities. It is considered that the Order applies to:

- a) permanently moored vessels (i.e. those which cannot travel) which are rented out on inland waterways; and
- b) boat yards.

Article 6(1) (c) exempts the application of the Order to a ship in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master. The Communities and Local Government's view is that this exception is likely to include narrow boats, cruisers and other sorts of pleasure craft rented for the purposes of holiday accommodation or other commercial activities. These vessels fall within the scope of the Merchant Shipping (Fire Protection) (Small Ships) Regulations 1998. The application of these regulations is not limited to seagoing vessels. Any queries about the application of these regulations should be directed to the Department for Transport.

The aforementioned types and uses of boat also fall within the scope of the Boat Safety Scheme, operated by British Waterways and the Environment Agency. This scheme aims to promote safety on boats on inland waterways and sets fire safety standards which must be met in order to obtain a navigation license.

The Communities and Local Government Fire Safety Risk Assessment guidance for Sleeping Accommodation currently states that the Order applies to boats. The Communities and Local Government recognise that this may be open to misinterpretation and have plans to clarify this position in the future when the guidance is revised.

Q. Supported and assisted living is becoming increasingly prevalent. How does the Order apply, if different from the first FAQ posed for this article (above)?

- A. The application of the Order to premises providing supported and assisted living has become a complex area for consideration. Supported and assisted living is a growth industry and is set to continue to grow in light of an aging population and the various dependencies that come with old age. Changes in the sector have resulted in numerous and ever-evolving approaches and types of premises and services to meet demand. The promotion of independent living (over institutional living) in later life further complicates fire safety in this sector.

In terms of the application of the Order, there are a number of considerations that should be 'weighed and measured' before a determination is made about whether or not the Order applies to the premises in question.

1. Where occupants of single private dwellings receive (regular) health care from the employees of external agencies, the Order does not apply to the single private dwelling because the principal use of the premises is as a single private dwelling, to which the Order does not apply.
2. In the Order the interpretation of "domestic premises" means premises occupied as a private dwelling (etc.)⁴¹. It is important to note that the determination of 'domestic' is made according to how premises are occupied

⁴¹ See the Order, article 2– Interpretation

- i.e. if premises are occupied as a private dwelling, they are a private dwelling; and the Order does not apply⁴².
3. The Order requires premises (or persons) being subject to a licence etc. under an enactment to record specified information⁴³. Notwithstanding this requirement, cognisance should be taken of whether or not the Order applies to the premises in the first instance i.e. the requirement for a licence can be independent from the Order applying to the premises.
 4. 'Domiciliary Care Agency' means an undertaking which consists of or involves the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance⁴⁴.
 5. If an establishment provides accommodation AND nursing or personal care, it must be registered under the Care Standards Act 2000. (The provider of the accommodation does not have to be the same as that providing the nursing or personal care)⁴⁵. The term 'licensing' includes certification and registration and 'licence' is to be construed accordingly⁴⁶.
 6. The occupants of premises or rooms within premises (who may be paying a rent) may not always have privacy (or a right of exclusion) e.g. cases in which nursing or other staff can access the premises or room and can do so when not invited. A further example is where the terms of a tenancy agreement allows the landlord (and / or employees) to enter premises or rooms to check on the occupant or the condition of the flat according to their own determination (rather than that of the tenant), whereas a normal tenancy agreement would usually only allow for an annual check (or entry by prior arrangement or in case of emergency).
 7. Nursing care can be a pre-requisite for entitlement to occupy the premises or part thereof AND nursing staff can enter of right, using their own access key.
 8. Under no circumstances can the Order apply to premises consisting of or comprised in a house which is occupied as a single private dwelling⁴⁷.

Using a common scenario for the type of premises under consideration, with associated comments are provided below to help provide some pragmatic clarity.

Issue: A problem area for many landlords dealing with extra care/ supported living is that the areas of responsibility under article 3 can be blurred. So, for instance a Responsible Social Landlord builds (satisfying the functional requirements of approved document B1 to the Building Regulations) a supported needs block. It requires 24/7 staffing by a competent support organisation.

Comment: (At this point, many of the fire safety requirements will be in place as a part of the 'build'). On occupation the organisation will have to undertake a fire risk assessment to identify the hazards and to put in place preventive measures and sufficient controls (mostly procedural and maintenance if the build was done properly and adequately addressed the protective measures).

⁴² See the Order, article 6– Application to premises

⁴³ See the Order, article 42– Special provisions in respect of licenced etc. premises

⁴⁴ Moore and others v Care Standards Tribunal and another; [2005] EWCA Civ 627, Court of Appeal, Civil division.

⁴⁵ Ibid

⁴⁶ Op. cit. article 42

⁴⁷ See the Order, article 31(10) and articles 6 and 2.

Issue: The residents are all given their own tenancy agreements so their rights to privacy are the same as any other RSL tenant.

Comment: (This causes a problem for fire officers because the moral part of them wants to see proper protections in place, but the law (the Order) only extends, in all likelihood, to the common areas as already agreed).

Issue: The RSL collects the rent and puts in place contracts to ensure the building is maintained and fire systems are serviced.

Comment: (Here the maintenance contractor will have duties in accordance with Article 5(4) but the RSL will have to be able to show due diligence in the selection and appointment (including ongoing controls) of competent persons to undertake that work).

Issue: Weekly / monthly checks are normally delegated to support staff

Comment: (If employed by the RSL, then the staff should receive adequate information and training to enable them to undertake their duties and the RSL will be responsible for this).

Issue: The local authority determines who is going to live in the premises and appoints the support provider who is managing the building on a day-to-day basis

Comment: (Day-to-day management equates to control of the premises, so the provider will have a duty to see that the requirements of the Order are addressed – according to Article 5(3)).

Issue: It is possible (and happens) that the support provider is replaced sometimes at short notice if they are considered not to be meeting the terms of the contract

Comment: (Where this happens the Order would expect the LA to ensure that they provide the new provider with all the fire safety-related information they might need to see that the fire safety at the premises is adequately sustained / maintained).

Issue: Generally speaking – the RSL is on site very infrequently only to deal with tenancy problems; the council visits occasionally to oversee the support provider; and the support provider is in the building continually.

Comment: (The RSL builds the premises, and builds-in safety to the building, and provides the provider with relevant safety information to ensure that fire safety is adequately provided). (The support provider who is continually in the building is likely to be responsible for day-to-day fire safety provisions, including regular checks, procedures, provision of information and training for employees etc.).

(Ultimately the enforcing authority should consider ‘following the money’ / management – at some point someone will have to authorize the budget / time to be spent on a particular function; they tend to be in control).

Issue: A simple table which goes beyond the hierarchy set out in article 3 would assist enforcement officers and those providing the housing / support activities.

Comment: (Article 3 may be a figurative ‘red herring’ insofar as the duties are set out at article 5 and any of the duty holders can be held liable for failures when and if things go wrong, from a fire safety point of view).

-End of common scenario, issues and comments-

The Order does not routinely apply to parts of premises occupied as a private dwelling. However, where the 'right to exclude' is lost, the right to privacy may also be lost and it may be interpreted that the Order applies to all parts of the premises because they are (potentially) used / occupied by persons other than the occupant of the dwelling.

The Order applies when supported living is provided within an institutional setting. Guidance relating to the standards of fire safety to be provided in premises to which the Order applies has been provided⁴⁸, which document pre-dates the Order and provides advice commensurate with acknowledging that such premises are a home to the residents and that the application of fire safety should maintain a homely, non-institutional environment.

Q. What is the impact of the Regulatory Reform (Fire Safety) (Custodial Premises) Subordinate Provisions Order 2018⁴⁹?

A. This Order operates to clarify the jurisdiction of the Crown Premises' Fire Safety Inspectorate (CPFSI) (previously CFIG) with respect to custodial premises which are operated under contract e.g. by G4S. The previous lack of clarity about which enforcing authority had jurisdiction (and the arrangement for CPFSI to undertake inspections of custodial premises on behalf of the local Fire and Rescue Service) has been addressed. The Custodial Premises Order simplifies arrangements by making custodial premises subject to enforcement action, as if they were Crown premises i.e. enforced by CPFSI.

Q. What is the impact of the insertions at article 6(1A) and article 6(1B) by the Fire Safety Act 2021?

A. Article 6(1)(a) is clear that the Order does not apply to 'domestic premises', interpreted at article 2. Article 2 interprets 'domestic premises' as (to paraphrase) premises occupied as a private dwelling and which is not used in common by the occupants of more than one such dwelling. The insertion of paragraph (1A) limits the exception by clarifying what is included and excluded in the interpretation. The parts used in common are clarified to include (i) the buildings' structure, (ii) external walls

⁴⁸ The Stationery Office, *Fire Precautions in housing providing NHS – Supported Living in the community - An Update of Health Technical Memorandum 88*, London, NHS Estates, 2001

⁴⁹ S.I. 2018: No. 454

(including doors or windows in those walls, and attachments to those walls, like balconies), and (iii) doors between domestic and common parts (typically front doors).

The common theme between these inclusions is the potential for a widespread fire hazard, beyond the confines of premises occupied as a private dwelling i.e., fire affecting the buildings' structure, a fire in the external walls, and a sub-standard fire door between premises occupied as a private dwelling and common parts, all present a potential hazard to the occupants of more than one such dwelling.

Q. Why did the Fire Safety Act 2022 make changes to the Order?

A. Lord Greenhalgh said *"It [the Order] is recognised as an enforcement route, even for external cladding systems; it is just that some fire and rescue authorities feel that it is too ambiguous. That ambiguity, lack of clarification and operational disagreement between different fire and rescue services—I say this as Fire Minister—is a significant problem. ... this modest three-clause Bill is a very sensible clarification of the fire safety order of 2005."*⁵⁰

Q. Do the changes made to narrow the exception of the Order to domestic premises, by the Fire Safety Act 2022 mean that the focus of the Order is shifting in favour of domestic premises?

A. While the Fire Safety Act 2022 at Section 1 limits the exception for domestic premises, to bring multiple occupancy domestic premises within the scope of the Order, although only as respects the building's structure and external walls (including windows and doors) and any common parts, it appears that the intention of the scope of the Order has not changed because the Home Office stated *"that it wants to ensure that the power [in Section 2 of that Act to change premises to which the Fire Safety Order applies] is not used to change the original intention of the Order which is primarily as a piece of workplace legislation."*⁵¹

⁵⁰ HANSARD, *Fire Safety Bill volume 811: debated on Wednesday 28 April 2021*, [online] available from <https://hansard.parliament.uk/lords/2021-04-28/debates/98E4480A-9A0F-4D0A-A861-37B525848DCF/FireSafetyBill> [accessed 14 July 2022] column 2368

⁵¹ House of Lords, *House of Lords Delegated Powers and Regulatory Reform Committee 25th Report of Session 2019-2021*, HL Paper 141 [online] available from <https://committees.parliament.uk/publications/3004/documents/28517/default/> [accessed 14 July 2022], paragraph 3.

Article 7—Disapplication of certain provisions

The Regulatory Reform (Fire Safety) Order 2005

Disapplication of certain provisions

7. —(1) Articles 9(4) and (5) and 19(2) do not apply in relation to occasional work or short-term work involving work regulated as not being harmful, damaging, or dangerous to young people in a family undertaking.

(2) Articles 9(2), 12, 16, 19(3) and 22(2) do not apply in relation to the use of means of transport by land, water or air where the use of means of transport is regulated by international agreements and the European Community directives giving effect to them and in so far as the use of means of transport falls within the disapplication in article 1.2(e) of Council Directive 1999/92/EC on minimum requirements for improving the safety and health of workers potentially at risk from explosive atmospheres, except for any means of transport intended for use in a potentially explosive atmosphere.

(3) Articles 19 and 21 impose duties only on responsible persons who are employers.

(4) The requirements of articles 8 to 23, or of any regulations made under article 24, do not have effect to the extent that they would prevent any of the following from carrying out their duties—

(a) any member of the armed forces of the Crown or of any visiting force;

(b) any constable or any member of a police force not being a constable;

(c) any member of any emergency service.

(5) Without prejudice to paragraph (4), article 14(2)(f) does not apply to any premises constituting, or forming part of, a prison within the meaning of the Prison Act 1952 or constituting, or forming part of, a remand centre, detention centre or youth custody centre provided by the Secretary of State under section 43 of that Act or any part of any other premises used for keeping persons in lawful custody or detention.

(6) Where paragraph (4) or (5) applies, the safety of relevant persons must nevertheless be ensured so far as is possible.

Article 7 Guidance Notes

This article points out the limitations of the various prohibitions and requirements of the Order as they relate to certain circumstances. The circumstances in question take account of: children and young persons working in family undertakings; means of transport which are regulated by international agreements; non-employers; non-interference with armed forces, police forces or emergency services; and the locking of doors to prisons and similar detention centres.

Other Health and Safety laws deal with protecting children and young persons from general safety risks⁵² and from over-working⁵³. The Order seeks to extend those protections to children and young persons in relation to fire risks. However, those articles of the Order that impose requirements or prohibitions in relation to children or young persons (principally due to their lack of maturity and inexperience) do not apply where the work is for a family undertaking; is short-term or occasional work; and is regulated as being not harmful, damaging or dangerous to young people. What is meant by harmful, damaging or dangerous in this context may be (to some extent) determined from reference to the Management of Health and Safety at Work Regulations 1999 and associated HSE guidance in respect of 'What the law says about young people at work'⁵⁴.

Although the Order does not apply to most means of transport by virtue of article 6; article 7(2) clarifies that those parts of the Order connected with dangerous substances and explosive atmospheres do not apply to means of transport that are subject to (stricter) international agreement or European Community Directives.

At article 7(4), compliance with articles 8-22 do not apply to armed forces, police forces and members of the emergency services but only insofar as compliance with the Order would prevent them from carrying out their primary duties. 'Primary duties' in this context refers to the operational-type duties of the various organisations e.g. officers that work in the various departments of the fire service are members of an emergency service but compliance with the Order will not prevent them from carrying out their duty and as such the responsible person is expected to comply; whereas an operational fire-fighter engaged in fire fighting duties should not be stopped from carrying his duty into effect because the general fire precautions in the (burning) building are not appropriate. Despite this apparent relaxation, it is necessary for the responsible person to ensure the safety of relevant persons as far as possible.

At article 7(4) the requirement to ensure that emergency doors should not be locked or fastened ... (compliance with article 14(2)(f)) is reasonably withdrawn in relation to prisons and similar detention centres. Despite this relaxation it is necessary for the responsible person to ensure the safety of relevant persons as far as possible.

Article 7 FAQ

Q. Can you clarify occasional, short-term and family undertaking?

A. The intention of this disapplication is to ensure the requirements of articles 9(4) and (5) (risk assessment for employment of young persons) and article 19(2) (providing information to a parent of the child before employing a child) do not apply in circumstances where the young person is a near relative of the employer. As a guide,

⁵² Health and Safety (Young Persons) Regulations 1997; and the Management of Health and Safety at Work Regulations 1999

⁵³ Application of working time regulations to young people

⁵⁴ Guidance from HSE website, *What the law says about young people at work*, [online], available from: <<http://www.hse.gov.uk/youngpeople/law/>> [Accessed 25 November 2014]

young persons employed by fathers, mothers, grandfathers, grandmothers, step-fathers, step-mothers, brothers, sisters, half-brothers and half-sisters may be considered as 'in a family undertaking'. Their employer will not therefore be considered subject to articles 9(4) and (5) and 19(2) if the work is not harmful, damaging or dangerous.

PART 2 FIRE SAFETY DUTIES

Article 8—Duty to take general fire precautions

The Regulatory Reform (Fire Safety) Order 2005

Duty to take general fire precautions

8. —(1) *The responsible person must—*

(a) take such general fire precautions as will ensure, so far as is reasonably practicable, the safety of any of his employees; and

(b) in relation to relevant persons who are not his employees, take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe.

Article 8 Guidance Notes

It is important to note the distinction made between the two separate requirements under this article. The first requirement is (to paraphrase) to ensure the safety of employees; whereas the second requirement is (again to paraphrase) to ensure the premises are safe for relevant persons.

The reason for this distinction is primarily due to the level of control that a responsible person can exercise over each of the different population groups, insofar as employees can be informed, instructed and trained and are subject to the requirements of the employer. The same is not true for a non-employee.

The requirements of this article indicate the strict liability to which ‘employer’ responsible persons are held. The strict liability will also be seen when considering other articles of the Order (in particular articles 33 and 34). This strict liability is an implicit duty that reflects the approach taken under general Health and Safety law; that the employer must do all that is required to safeguard the safety of an employee.

Note should be taken of the fact that article 8(1)(a) falls outside the scope of the usual defence of due diligence, made available to a responsible person under the Order (see article 33). Note should also be taken of the fact that the whole of article 8 is subject to the term ‘reasonably practicable’ and as such the onus is placed on the responsible person (instead of the enforcing authority) to prove that it was not reasonable for them to have done more than they did, to satisfy the requirements of this article.

Article 8 points out to responsible persons that they must take general fire precautions, which should direct them to the meaning of general fire precautions at article 4, and when considered with the duties imposed on responsible persons at article 5 (including article 5(5)) the life safety objective of the Order can be clearly seen.

Article 8 FAQ

Q. Apart from one being employees and the other talking about other relevant persons what is the measure of the different protection this article offers to each group?

A. Article 8(1)(a) reflects the absolute duty of an employer for the safety of his/her employees under European Law. That duty is subject only to the test of gross disproportionality provided for by use of the term “so far as is reasonably practicable” (see the FSO Guidance Notes for this term given in this document under article 2 – interpretation). Article 8(1)(b) provides that the premises must be safe for use by non-employees and is subject to a test of reasonableness.

Q. If the requirement to take general fire precautions at article 8, taken together with article 4 and article 5 should lead the responsible person to provide fire safety to relevant persons, what is the purpose of articles 8-22 and any regulations made under article 24?

A. While the Order can be complied with by providing general fire precautions, the detail of how to achieve the necessary level of protection can be found by consulting articles 8-22 (etc) e.g. if the responsible person was unsure of how to deliver safety to comply with article 4(1)(b) - Measures in relation to the means of escape from the premises, he might need to consult the following articles in order to establish what is expected of him: articles 9, 11, 14, 17, 18, 19 and 21.

Article 9—Risk assessment

The Regulatory Reform (Fire Safety) Order 2005

Risk assessment

9. —(1) *The responsible person must make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions he needs to take to comply with the requirements and prohibitions imposed on him by or under this Order.*

(2) *Where a dangerous substance is or is liable to be present in or on the premises, the risk assessment must include consideration of the matters set out in Part 1 of Schedule 1.*

(3) *Any such assessment must be reviewed by the responsible person regularly so as to keep it up to date and particularly if—*

(a) there is reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates including when the premises, special, technical and organisational measures, or organisation of the work undergo significant changes, extensions, or conversions,

and where changes to an assessment are required as a result of any such review, the responsible person must make them.

(4) *The responsible person must not employ a young person unless he has, in relation to risks to young persons, made or reviewed an assessment in accordance with paragraphs (1) and (5).*

(5) *In making or reviewing the assessment, the responsible person who employs or is to employ a young person must take particular account of the matters set out in Part 2 of Schedule 1.*

(6) *As soon as practicable after the assessment is made or reviewed, the responsible person must ~~record the information prescribed by paragraph (7) where~~ make a record of the assessment or review, which must in particular include the information prescribed by paragraph (7)—*

~~(a) he employs five or more employees;~~

~~(b) a licence under an enactment is in force in relation to the premises; or~~

~~(c) an alterations notice requiring this is in force in relation to the premises.~~

(7) *The prescribed information is—*

(a) the **significant** findings of the assessment, including the measures which have been or will be taken by the responsible person pursuant to this Order; and

(b) any group of persons identified by the assessment as being especially at risk.

(8) No new work activity involving a dangerous substance may commence unless —

(a) the risk assessment has been made; and

(b) the measures required by or under this Order have been implemented.

Article 9 Guidance Notes

The concept of risk assessment is not new and has been involved with fire laws since 1997⁵⁵ and more broadly used in Health and Safety laws for significantly longer.

Any risk assessment produced under the Order must identify the general fire precautions that are required for the safety of people. These general fire precautions (or preventive and protective measures) include those which have been taken to protect people and those further requirements needed to provide additional safety from fire. The Order provides that once the risk assessment has been conducted the findings should be acted upon (as directed at article 8) and that certain findings of the assessment should be recorded. Responsible persons that have conducted a risk assessment are then expected “to apply measures to control risks and to mitigate the detrimental effects of fire”⁵⁶.

The fire risk assessment is one requirement within the scope of articles 8-22 but it is not inherently a ‘general fire precaution’. Rather it sits outside the scope of those precautions as the ‘process’ from which the general fire precautions flow. At article 8 we identified that for example the employer in a workplace is ultimately responsible (strictly liable) for complying with the general fire precautions he needs to take and although not inherently a general fire precaution, the same strict liability applies to the carrying out of the risk assessment.

It should be noted that where premises comprise a workplace, and employees (managers or other staff) have been delegated to carry out the risk assessment; the employer continues to carry the burden of responsibility for carrying out that risk assessment⁵⁷. For a person other than the employer to carry the burden for any consequences from an improperly conducted risk assessment, the employer must be able to demonstrate that they wholly complied with all the requirements of the Order. The responsible person may pass or at least share legal responsibility with an employee (as manager or other) where the act or omission giving rise to the failure can be shown to be entirely the fault of that employee. However, to qualify this statement, the employer must have complied with his requirements under the Order e.g. where the employee is able to demonstrate that he did not have the required training and instruction i.e. the employer has not complied perfectly with the Order then the employer will remain responsible. If he is unable to demonstrate full compliance with those matters that are

⁵⁵ The Fire Precaution (Workplace) Regulations 1997, SI 1997 No. 1840

⁵⁶ GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, Amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002*

⁵⁷ House of Commons Regulatory Reform Committee, *Proposal for the Regulatory Reform (Fire Safety) Order 2004, Eleventh Report of Session 2003-04, Report, together with formal minutes, written and oral evidence, HC 684, [online], 2004, London, House of Commons*

within his control, including the requirements to confirm the adequacy of completed risk assessments, provide instruction, and to train staff to enable them to carry out the assessment, the employer is unlikely to escape his burden.

The responsibility held by the employer (in a workplace) is demonstrable by considering article 5(1), which (to paraphrase) says – where premises are workplaces; the employer retains the duty to ensure that a risk assessment under article 9 is carried out in respect of those premises.

For premises that are not workplaces the requirement to carry out a risk assessment lies with the person having control of the premises in connection with the carrying on of a trade, business or other undertaking. Where there is no such trade, business or other undertaking the risk assessment should be conducted by the owner.

For premises that are multi-occupied; each tenant (as an employer or as an occupier engaged in a trade, business or other undertaking) must carry out a risk assessment for their occupancy, and for the routes to and egress from their occupancy. Where the risk assessment identifies failures in the premises (but beyond their occupancy) e.g. no emergency lighting within a common staircase the tenant's risk assessment should identify that failure. The failure should be subsequently rectified through co-operation and co-ordination with the owner responsible person. The premises owner should take measures to address the failure. The owner may not be necessarily expected to have a risk assessment of their own for the whole building, because the requirements imposed on the employer take primacy, but areas of the building that are entirely under the owners control should be assessed.

There is often a perception that the dangerous substance provisions in the Order are taken from DSEAR and that a DSEAR risk assessment will, accordingly satisfy the Order. Fire risk assessments presented on audits of premises where dangerous substances are found, often make no reference to the presence of dangerous substances (on the grounds that they have been addressed in some other assessment). This belies the fact that the Order and DSEAR are distinct pieces of legislation with distinct remits, i.e. the Order considers the effect of dangerous substances on GFP; while DSEAR considers the aspects of work involving plant and machinery and the use of dangerous substances. Therefore, if dangerous substances are present and have an impact on general fire precautions, the presence of the dangerous substance should be identified in the fire risk assessment under the Order.

Article 9(2) of the Order provides that where a dangerous substance is or is liable to be present in or on the premises, the risk assessment process must include consideration of the matters set out in Part 1 Schedule 1 of the Order. This requirement is explicit. It should also be noted that the matters set out in Part 1 Schedule 1 also include 'the effect of measures which have been or will be taken pursuant to this Order'. This will require the fire risk assessment to consider how the general fire precautions are affected by dangerous substances.

Due to the risks involved with dangerous substances, it is expected that the findings of the risk assessment will identify the presence of dangerous substances, together with any additional preventive or protective measures necessary to secure the safety of relevant persons. Inspecting officers should be aware of this requirement during audits and should confirm whether this provision of the Order has been complied with.

It should also be noted that where dangerous substances are present, the significant findings of the risk assessment must be provided to employees, following Article 19(3).

Article 9(3) "underlines the principle of dynamic risk assessment. In other words, risk assessment is an ongoing process. The responsible person could not carry out his risk

assessment and then forget about it; it must be kept constantly under review.”⁵⁸ This article indicates key triggers for the review of a risk assessment however the use of the term ‘regularly’ may require some explanation:

- (a) As the nature of work changes, the appreciation of hazards and risks may develop. Monitoring under the arrangements required by article 11 may reveal near misses or defects in preventive and protective measures. Adverse events such as a fire or other dangerous occurrence may take place even if a suitable and sufficient risk assessment has been made and appropriate preventive and protective measures taken. Such events should be a trigger for reviewing the original assessment.
- (b) The responsible person needs to review the risk assessment if developments suggest that it may no longer be valid (or could be reasonably improved in line with the principles of ALARP and SFAIRP). In most cases, it is prudent to plan to review risk assessments at regular intervals. The time between reviews is dependent on the nature of the risks and the degree of change likely in the work activity. Such reviews should form part of standard management practice.

Any fire risk assessment must be reviewed by the responsible person regularly so as to keep it up to date. There is no definition of regularly but annually is generally accepted to be best practice.

Where children or young persons are working, inspectors should look for evidence that the assessment has been made or reviewed and that it has taken account of those matters listed at Part 2 of Schedule 1, in particular the lack of maturity and inexperience of young people.

If an organisation employs five or more people, the premises are licensed⁵⁹ or an alterations notice is in force (that requires it), then the significant findings of the fire risk assessment and the details of any group of persons considered as being especially at risk must be recorded.

For the avoidance of doubt, where employees are spread across different sites, e.g. the five employed persons are distributed between three premises a record of relevant information would be required at each location⁶⁰.

Even where less than five persons are employed there is still a requirement to complete a risk assessment, but the responsible person is not legally required to record the significant findings or people at risk etc. but best practice is to document the outcomes of a risk assessment regardless of numbers.

Information found as a result of the risk assessment should be recorded under the previously stated circumstances; the prescribed information is—

⁵⁸ GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, Amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use* A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002, p. 23

⁵⁹ See article 42(3)(b)

⁶⁰ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, 2007, Paragraph 57

(1) the significant findings of the assessment, including the measures which have been or will be taken by the responsible person pursuant to this Order; and

Significant findings – should include:

- (a) a record of the preventive and protective measures which are already in place to control the risks; and
- (b) what further action, if any, needs to be taken to provide preventive and protective measures. Where further action is planned then it is reasonable to provide a time-scale for completion (such that the period of time is known that the premises are not as safe as they might be);

N.B. The measures taken and to be taken to comply with the Order should not only address the presence of measures taken but the purpose of those measures that are in place e.g. the provision of fire doors to a dead-end situation that ultimately result in the dead-end being an acceptable risk. This is also a good example of the usefulness of illustrating the protective measures on a plan⁶¹;

- (c) proof that a suitable and sufficient assessment has been made. In many cases it is also necessary to record sufficient detail of the assessment itself, so that the responsible person can demonstrate that they have carried out a suitable and sufficient assessment of: the hazards (to which relevant persons are exposed in case of fire); and the risks (which inherently accounts for the likelihood and the consequences of that event being realised). This record of the significant findings will also form a basis for a revision of the assessment.

(2) any group of persons identified by the assessment as being especially at risk.

Persons especially at risk – “Special consideration should be given to any group of persons who may be especially at risk in case of fire whether due to their location or any other factor.”⁶² Persons that are unlikely to be protected by the general fire precautions should be considered within this group. The following list is illustrative of those that might be considered as being especially at risk in case of fire:

- Those with limiting disabilities.
- Workers in remote locations.
- Persons under the influence of drink or drugs.
- Persons sleeping on the premises.
- Separated groups (e.g. children in a crèche while parents are otherwise

⁶¹ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007, paragraph 62

⁶² GREAT BRITAIN. The Office of the Deputy Prime Minister, *THE REGULATORY REFORM (FIRE SAFETY) ORDER STATEMENT BY THE OFFICE OF THE DEPUTY PRIME MINISTER* [laid before Parliament in accordance with section 6 of the Regulatory Reform Act 2001 together with the draft of the Regulatory Reform (Fire Safety) Order 2004 which is proposed to be made under section 1 of that Act.], London, The Office of the Deputy Prime Minister, 2004a, para.11

occupied, due to their likely behaviour in a fire situation).

- Those engaged in lone-working.
- Young persons.

Article 9 FAQ

Q. Article 9(1) Does the Risk Assessment identify the general fire precautions that are needed?

A. Yes. The assessment of risks to which relevant persons are exposed is for the purpose of identifying the general fire precautions the responsible person needs to take to protect relevant persons, in accordance with the Order. The entire thrust of the Order shifts responsibility (away from Fire Authorities who previously had to certificate premises under the Fire Precautions Act 1971) to responsible persons who have to carry out a fire risk assessment and to subsequently implement its findings. People's lives depend on responsible persons' compliance with this central obligation.

Q. In relation to article 9(2); would you expect to see compliance with Part 1 Schedule 1 outlined in the significant findings?

A. Only to the extent that compliance with any element of Part 1 schedule 1 is of itself a significant finding e.g. the scale of the anticipated effects of a dangerous substance becoming involved in a fire would be likely to be a significant finding if the scale of effect would place relevant persons at risk.

Q. In relation to article 9(3); what is meant by 'regularly'?

A. There is no defined timescale. The assessment should be treated as a 'living' document that is subject to ongoing review of sufficient frequency to keep the assessment up-to-date with any changes to the risks on the premises. Articles 9(3)(a) and 9(3)(b) identify matters which must automatically trigger a review.

Q. Is article 9(3)(b) for the Health and Safety Executive only?

A. No, these are for the authority enforcing the Order. Significant changes to the matters to which the risk assessment relates or changes of the specific types mentioned may well impact on the general fire precautions and so should trigger a review of the assessment by the responsible person.

Q. Article 9(6) what is as soon as practicable?

A. It means at the first reasonably available opportunity. It will not always be possible to write-up significant findings immediately, but the responsible person should seek to do so as soon as possible after the assessment is made.

Q. 9(7) what are 'significant findings'?

A. Significant hazards and risks to persons that were found by the assessment; precautions already in place to protect persons from fire; and preventative and protective measures (i.e. general fire precautions) that will be taken to address the hazards and risks identified by the risk assessment.

Q. In relation to article 9(7); what is meant by measures that have been or will be taken?

A. Things that the responsible person has done (e.g. has installed a fire alarm system, has trained staff to evacuate) or will do (e.g. will install a fire alarm and will train staff to evacuate). The types of measures the Order is concerned with are described in the definition of general fire precautions at article 4 of the Order.

Q. At article 9(7)(b), what is meant by the term ‘any group persons identified by the assessment as being especially at risk’

A. The term may imply a narrow definition to some and incorporate e.g. those with physical or mental disability or with particular needs associated with making a safe escape in case of fire. A broader application may, however, be more appropriate (within a fire safety context). A broader approach might build-on standard fire safety principles e.g. persons occupying an inner-room are especially at risk in case of fire by virtue of the potential for fire in the access room. The situation might be amply protected with e.g. smoke detection linked to the fire alarm system in the access room, thereby mitigating the risk. If, subsequently the detection is found to be faulty and the occupants of the inner-room have not been identified at risk; how will a reference to the findings of the risk assessment inform those responsible for safety that something more should be done? Therefore, the term could be applied to a number of fire safety principles including dead-end conditions, single staircases, excessive travel distances, etc. and a variety of situations in which safety features have been used as a trade-off for some other deficiency.

Q. In relation to article 9(7); how should the group of persons identified be recorded in the significant findings?

A. A prose description of who (e.g. the window-cleaner in the cradle, workers on the roof, persons with mobility impairment, etc). Ideally a reason will be given regarding why they are especially at risk (e.g. workers on the roof may not hear the fire alarm or know it is from these premises. To evacuate they would have to re-enter the building).

Q. Is there a standard means of recording the findings of the assessment?

A. No. There are several recognised standards for recording risk assessments such as that which is stated in the guidance documents which make use of the five steps of risk assessment. The main point is to follow the risk assessment process and to act on findings. Where a person is ‘out of their depth’ or does not have the necessary abilities to properly carry out the risk assessment; someone else (that does understand the risk and the process) should be used and again, the findings should be acted upon

within a reasonable timescale.

Q. Does the assessment need to be kept on the premises?

A. Keeping recorded information, required by the Order, on the premises is considered best practice so that they can be produced if requested by the enforcing authority. Inspectors may discover situations in which risk assessments are kept at a central location only. It should be noted that there is no requirement under the Order to record the *assessment* and that, while risk assessments may be held centrally, the significant findings, together with all other information required to be recorded under the Order should be available at each discrete location. This will enable duty holders at each location to carry out the duties imposed on them by the Order.

The holding of important information relating to the business in some secondary location is equally good practice, if only for business continuity purposes.

Q. Is there any reference that causes the prescribed information resulting from the risk assessment to be available at each discreet location?

A. The reason that records should be available at each site is that the assessment process is concerned with general fire precautions (see article 4) as they relate to relevant persons (both employees and other persons). General fire precautions relate, by definition, to specific premises. The general fire precautions, relevant persons or both will vary from premises to premises and as such the prescribed information should relate to each discreet site and should be maintained there to allow duty holders to manage the fire safety of the site.

Q. Does the prescribed information have to be recorded in a written format?

A. Those parts of the assessment process that are required to be recorded should be recorded in a legible format. It is best practice for all responsible persons to record these prescribed features of the assessment, if only to avoid having to memorise all the necessary information. With regard to the assessment itself; the risk assessment is a process and as such does not have to be recorded but having a written copy can help enforcing authorities if doubt arises. The enforcing authority has to be able to read recorded information to determine whether the Order is being complied with.

List of information that should be recorded:

- The significant findings of the fire risk assessment (including measures that have been taken as well as those that are intended to be taken);
- Any persons that are especially at risk from fire; and
- The fire safety arrangements, relevant to the premises.

Q. Does the assessment need to be specific to the premises to which it relates?

A. It is important that the prescribed information is specific to the premises to which it relates. Since the prescribed information flows from the risk assessment process, it follows that the assessment too must be premises specific. Where premises are designed and built to a generic standard then a generic assessment of the risks may

be an appropriate starting point, but the specifics of the boundary, relevant persons and employees will have to be specific. For example, consider a building design that incorporates an inner room situation which is satisfied by the provision of some form of detection in the outer room. In the case of a deaf employee working in the inner room the generic solution will not be adequate or appropriate. An assessment of the risk specific to the premises will reveal the problem and a suitable protective measure can be put in place.

Q. Does the Regulation 28 letter from Coroner Dr Fiona Wilcox to the Secretary of State for Communities and Local Government regarding the potential inadequacy of fire risk assessments change the guidance given above?⁶³

A. The matters of concern were:

1. That the current guidance relating to risk assessments in residential care homes is insufficient, as the assessments are not required to take into account individual risk factors.
2. That individual fire risk assessments are not currently undertaken and recorded as part of the individual's care plans and other assessments.
3. That fire risk assessments do not currently take into account persons present and these persons access to fire sources.
4. That assessments do not currently include actions aimed at putting into place appropriate control measures for individual residents identified as being at increased risk.
5. That there is currently no guidance in place recommending individual risk assessments and any control measures be regularly reviewed and updated according to any recorded decline in cognitive capacity.

The matters raised are in part for the care sector (regulators and industry) to address. With reference to the fire risk assessment matters, the provision of current risk assessment should be sufficiently risk focused to deal with the matters raised. The presence of smoking on premises must be seen as a significant finding due the potential ignition source. It is usual for premises to be subject to laws that ban smoking in premises but in the care home environment, smoking may be permitted in residents' rooms (the law does not extend into dwellings). The identification of an ignition source will lead to a (suitable and sufficient) fire risk assessment considering the preventive, protective or other mitigating actions that might be taken to prevent ignition (given that fire in any premises represents a risk to other people in the premises). There are a number of interventions available for such situations, which would be reasonable to take or observe for the continued safety of the premises (to ensure they are safe for relevant persons who are not employees) or the safety of any employees (to ensure the safety of employees).

Q. What is the effect of removing the word significant from the prescribed information?

A. The findings of the assessment are those that deliver on the requirements of the Order i.e. the findings that contribute to the aim of the Order to safeguard the

⁶³ Dr Fiona Wilcox *Regulation 28: Report to Prevent Future Deaths*, Senior Coroner, for the coroner area of West London, Letter to Secretary of State for Communities and Local Authority, 6th July 2015

safety of relevant persons in case of fire. The assessment should (as ever) be capable of being understood by the reader so that, if changes occur between scheduled reviews, the RP or duty holder is able to understand the importance of those changes (in terms of fire safety) and either take the appropriate steps to maintain safety or to realise that further specialist advice is required. Such changes between scheduled reviews should, of course, trigger a review of the fire risk assessment and the assessment should be updated.

Article 9A—Risk assessment: assistance [Yet to be enacted]

The Regulatory Reform (Fire Safety) Order 2005

Risk assessment: assistance

9A. —(1) The responsible person must not appoint a person to assist them with making or reviewing an assessment under article 9 unless that person is competent.

(2) A person is to be regarded as competent for the purpose of this article where the person has sufficient training and experience or knowledge and other qualities to enable the person properly to assist in making or reviewing the assessment.

(3) Where the responsible person appoints more than one person, the responsible person must make arrangements for ensuring adequate cooperation between them

Article 9A Guidance Notes

Although this article is yet to be enacted (the last remaining amendment made by Section 156 of the Building Safety Act), the intention of it is robust. A Responsible Person might be considered foolhardy to appoint an incompetent person to assist with the making or reviewing of an assessment made under article 9. From this point of view, the implementation of the article is somewhat incidental to the good practice of engaging competent assistance.

The fire industry continues to strive to define competence in fire risk assessment. Industry guidance is hosted on the Fire Sector Federation web site⁶⁴, which states, among others “Those seeking to use fire risk assessor services should always apply diligence when choosing a fire risk assessor to ensure that the assessor they select is competent for the task in hand; this applies whether or not the assessor is listed or not. A competent fire risk assessor will always confirm whether or not they are competent and capable to work on the task they are being asked to undertake.”

Article 9A FAQ

⁶⁴ Fire Sector Federation website, *Fire Risk Assessment*, [online] available from: <https://www.firesectorfederation.co.uk/fire-risk-assessment/> [accessed 30 September 2023]

Article 10—Principles of prevention to be applied

The Regulatory Reform (Fire Safety) Order 2005

Principles of prevention to be applied

10. Where the responsible person implements any preventive and protective measures he must do so on the basis of the principles specified in Part 3 of Schedule 1.

Article 10 Guidance Notes

Note should be taken of the wording used here. The requirement states “where the responsible person implements any preventive or protective measures he must ...”. It should be noted that, where the responsible person has not made such efforts, no requirement can be made to comply with article 10.

It is worthy of note that a person cannot be seen to have failed to comply with the requirements of article 10 if they have NOT implemented ANY preventive and protective measures.

Article 10 requires the responsible person to take measures to prevent fires occurring but is equally relevant to protection from fire as well as prevention of fire (see Part 3 of Schedule 1, in particular paragraph (g)).

The principles laid down in Part 3 of Schedule 1 appear to have been laid out in a descending order of possible application with ‘avoiding risks’ seen as the most ideal and ‘instructions to employees’ as the least favourable option. The apparent hierarchical approach used cannot necessarily be enforced as such on the grounds that any of the principles (a) – (h) may provide a legally acceptable solution. Where a number of different solutions may exist officers will of course recommend a hierarchical approach from the principles as shown.

The principles at Schedule 1, Part 3 follow a similar train of thought as laid down in Health and Safety guidance insofar as it is better to avoid risks than to simply address the problem with an additional protective measure e.g. a photocopier in a means of escape corridor being protected through the installation of Automatic Fire Detection rather than preventing the problem through the relocation of the hazard.

Article 10 FAQ

Q. How would an Inspecting Officer check that this article has been complied with?

A. The likely indicators will be that there are fire hazards that have not been removed or reduced and the premises have not adapted to progress but have simply installed physical fire precautions to compensate for removable / reducible hazards present in the premises. Another indicator could be the like-for-like replacement of previously installed safety measure, when technical progress has developed a more appropriate solution / a revised standard for the safety measure.

Article 11—Fire safety arrangements

The Regulatory Reform (Fire Safety) Order 2005

Fire safety arrangements

11. —(1) The responsible person must make and give effect to such arrangements as are appropriate, having regard to the size of his undertaking and the nature of its activities, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) The responsible person must record the arrangements referred to in paragraph (1).
~~where—~~

~~—(a) he employs five or more employees;~~

~~(b) a licence under an enactment is in force in relation to the premises; or~~

~~(c) an alterations notice requiring a record to be made of those arrangements is in force in relation to the premises.~~

Article 11 Guidance Notes

The quality and depth of the fire safety arrangements put in place for any given premises will vary with the nature of the premises. The arrangements will range from something very simplistic (even virtually non-existent where there are no general fire precautions to speak of) through to a complex arrangement of maintenance contracts, method statements, a means for employees to report deficiencies in general fire precautions, schedules for periodic reviews and tests of the various preventive and protective measures in place, etc. These aspects of fire safety are likely to require careful questioning by inspectors in order to adequately account for whether or not fire safety arrangements are in place. The fire safety arrangements in place (or absent) are likely to be contributory features to fire safety failures that have been observed and these invisible (as well as the visible) failures that compromise safety will have to be addressed to bring about safety. Premises that have good (appropriate) fire safety arrangements in place may be seen as being more likely to have a sustainable level of safety from fire than premises in which poor (or non-existent) fire safety arrangements are in place. The adoption of good fire safety arrangements will necessarily contribute to the holistic fire safety solution in the premises.

If management can demonstrate, in a recorded form (where required), that they have a general policy for the day-to-day running of the business, which includes recognition that fire safety is an important consideration; they are going some way to complying with this article. Compliance with this article may be shown through programmed maintenance dates, and training and instruction intervals for members of staff. Such actions might demonstrate the basic requirement of this article; that management can be seen to take an active role in promoting fire safety within the daily working routines of the business. It will demonstrate that not only have relevant preventive and protective measures been put in place by the responsible person, but that he understands the importance of those measures and the part

they play in providing for the safety of relevant persons. Such understanding is crucial when something goes wrong for example. His level of understanding will not only identify the impact of the failure but also what must be done as a consequence of it.

The important aspect of this article is that fire safety is 'managed' and that the elements of the arrangements are being addressed. Responsible persons may choose to address these arrangements within the pages of a 'fire safety policy' but the over-riding consideration has to be that the management of fire safety has been addressed in some way. Such arrangements will also include the requirement (where necessary) to co-operate and co-ordinate with other responsible persons.

The requirement to effectively plan, organise, control, monitor and review each of their preventive and protective measures (as appropriate) may be different for each measure. By way of example consider the protective measures that are fire rated door-sets. The responsible person will be expected to effectively plan, organise, control, monitor and review for the relevant doors in the premises to ensure their continued effectiveness. The responsible person might for example:

- Plan – have a numbered door schedule to assist in the identification of relevant doors; and ensure that relevant information and training relating to the importance of doors is given to employees
- Organise – work out how the doors should be routinely inspected and nominate somebody to be in charge of this function
- Control – have in place a system that enables employees to report defects to the person in charge of door maintenance
- Monitor – ensure that the door-sets are routinely checked over a given period
- Review – make sure that the systems in place are operating as intended

This example is purely illustrative of how the arrangements might be addressed and it is possible that an overall policy might be put in place rather than considering each measure in isolation; indeed, this is likely to be preferable. Whatever the system put in place by the responsible person, it should remain under review and should be flexible in its approach to enable prompt handling of matters when they go wrong.

Where fire safety arrangements are in place and deficiencies are found, the management may already have awareness of the deficiency and should be able to detail the issues, and state when the deficiency will be addressed. He should also be able to discuss the priority given to each deficiency in the premises.

Compliance with this article is likely to reflect many of the articles between articles 8-22 and article 24 with which responsible persons and duty holders have to comply, as a means of showing how those areas of compliance are arranged and brought into effect.

Article 11 FAQ

Q. Are the procedures in case of fire recorded here?

A. Fire procedures should be recorded as a significant finding under article 9—Risk assessment, while the procedures themselves are established under article 15(1). However, the arrangements for keeping fire procedures under review would be recorded by virtue of Article 11—Fire safety arrangements and subsequently re-established (where necessary) again under article 15(1).

Q. What review period should be in place for these measures?

A. At least in-line with the review of the assessment but a review should be undertaken whenever changes are made.

Q. Is there a requirement under the Order to maintain records of tests?

A. Preventive and protective measures provided should be subject to ‘planning, organisation, control, monitoring and review’ under article 11—Fire safety arrangements. These arrangements should be recorded under prescribed conditions, but there is no express requirement to record the results of routine testing. The recording of such results would be good practice because it enables the responsible person / duty holder to evidence that testing has taken place, should the need arise.

Q. What is the practical impact of the changes made to the Order by the Building Safety Act 2022, in removing the previous wording of 11(2)?

A. The removal of limits means that all RPs regardless of the size of their undertaking must record the fire safety arrangements referred to in paragraph 1. In some smaller premises, simple maintenance and service records might suffice, providing that those records address all the preventive and protective measures (or general fire precautions) taken by the RP. In other case, to demonstrate that the general fire precautions in the premises are subject to planning, organisation, control, monitoring and review will be much more involved and might require a dedicated manager of fire safety to provide the necessary assurance to enforcing authorities.

Article 12—Elimination or reduction of risks from dangerous substances

The Regulatory Reform (Fire Safety) Order 2005

Elimination or reduction of risks from dangerous substances

12. —(1) *Where a dangerous substance is present in or on the premises, the responsible person must ensure that risk to relevant persons related to the presence of the substance is either eliminated or reduced so far as is reasonably practicable.*

(2) *In complying with his duty under paragraph (1), the responsible person must, so far as is reasonably practicable, replace a dangerous substance, or the use of a dangerous substance, with a substance or process which either eliminates or reduces the risk to relevant persons.*

(3) *Where it is not reasonably practicable to eliminate risk pursuant to paragraphs (1) and (2), the responsible person must, so far as is reasonably practicable, apply measures consistent with the risk assessment and appropriate to the nature of the activity or operation, including the measures specified in Part 4 of Schedule 1 to this Order to—*

(a) control the risk, and

(b) mitigate the detrimental effects of a fire.

(4) *The responsible person must—*

(a) arrange for the safe handling, storage and transport of dangerous substances and waste containing dangerous substances; and

(b) ensure that any conditions necessary pursuant to this Order for ensuring the elimination or reduction of risk are maintained.

Article 12 Guidance Notes

For improved clarity and to aid understanding, the reader is advised to refer to Part 4 of Schedule 1 to the Order when reading this Guidance Note to article 12.

The Order defines a dangerous substance⁶⁵ at article 2—Interpretation.

For those circumstances where measures that fall within the scope of ‘general fire precautions’⁶⁶ are required to be taken in relation to dangerous substances, inspecting officers should audit with the intention of determining whether risk has been mitigated as far as is reasonably practicable.

⁶⁵ See also The Dangerous Substances and Explosive Atmospheres Regulations 2002 - footnoted because this interpretation document is about the Order, not about DSEAR, albeit that the requirements have been taken from DSEAR.

⁶⁶ See the interpretation to article 4 in this document

Where a dangerous substance is present on premises, the responsible person must ensure that the risk related to the presence of the substance is either eliminated or reduced so far as is reasonably practical, doing so by replacing the dangerous substance or its use with something else that reduces the risk. Where this is not reasonably practical, the responsible person must, as far as is reasonably practical, apply measures consistent with the risk assessment and appropriate to the nature of the activity in order to control the risk and mitigate the detrimental effects of a fire.

Enforcing authorities are reminded that the requirements of this article are to provide such general fire precautions as might be required due to the presence of a dangerous substance. This does not extend to special technical and organisational measures related to the reduction of risk from 'work processes', which are dealt with under legislation enforced by the HSE⁶⁷.

Where a dangerous substance is present in or on the premises, the responsible person must ensure that the risk to relevant persons related to the presence of the substance is either eliminated or reduced so far as is reasonably practicable.

A simple example of this would be substituting oxy-acetylene cutting equipment for oxy-propane cutting equipment; thereby reducing the potential risk to relevant persons should the equipment become involved in fire.

The first thing to establish is whether or not dangerous substances are present on the premises. If so, what are the additional risks in case of fire as a result of the presence of the dangerous substances, i.e. if a fire were to occur how would the dangerous substance affect the spread or intensity of fire? Would this increase the risk of a relevant person suffering harm? To help the inspecting officer determine whether this article has been complied with, consideration should be given to whether or not the responsible person has reduced the risk so far as reasonably practicable.

Take for example, the presence of dust in a factory, which might occur as a result of a faulty or failed filtration / extraction process. The laying dust presents a high additional risk in case of fire. The spread and intensity of fire would be accelerated and intensified because an explosion is reasonably foreseeable. The risk of harm to relevant persons is increased exponentially. The responsible person may have done nothing and allowed the build-up of dust or (conversely) might have instigated a rigorous and regular clean-up procedure to reduce the risk until the process safety precautions can be reinstated.

In some cases, it may be difficult to determine if the responsible person has reduced the risk to the lowest level reasonably practicable; however, the Enforcing Authority should be able to determine whether the responsible person has evaluated the risk and put measures in place to reduce and / or control it. In cases of doubt enforcing authorities / inspecting officers may wish to seek assistance; for example, from the HSE to obtain more specialist knowledge as to the use and storage of dangerous substances. In addition, careful questioning of the responsible person and other duty holders should help determine the degree of compliance

⁶⁷ See article 4 of this interpretation for greater detail of the relationship between general fire precautions and dangerous substances.

with this article; remembering that for this article, it is for the responsible person to demonstrate that he has done all that he could⁶⁸ to comply.

Substitution

This article requires that preference be first given to substituting the dangerous substance(s) with a different substance or substituting a new or modified work process⁶⁹ so as to eliminate or reduce the risk. Substitution to eliminate risks is the best solution but, in practice, it is often difficult to achieve. It is likely that it will be more practicable to replace the dangerous substance with one that is less hazardous (e.g. by replacing a low flashpoint solvent with a solvent having a high-flashpoint).

An alternative is to design the process⁷⁰ so that it is less dangerous. This might include, for example, changing from a batch production to a continuous production process; or changing the manner or sequence in which the dangerous substance is added. However, care must be taken when carrying out these steps to ensure that no other new safety or health risks are created or introduced, which then outweigh the improvements implemented as a result of attempting to comply with this article. N.B. changes like these are process driven and as such do not fall under the Order but are dealt with under other legislation e.g. Control of Major Accident Hazards Regulations 1999 (as amended), and Health and Safety at Work etc. Act 1974, etc.

Control and mitigation measures

Where risks cannot be completely eliminated through substitution, responsible persons should use a combination of control and mitigation measures to ensure the safety of relevant persons. In existing work situations, the current control and mitigation measures should be carefully reviewed, in light of experience and subsequently improved, extended, or replaced as necessary to ensure that they are achieving, and sustaining the necessary level of risk reduction.

The measures selected should be appropriate to the nature of the work activity, consistent with the risk assessment and sufficient to reduce the overall risk 'so far as is reasonably practicable'. This is particularly important where an explosive atmosphere contains a mixture of dangerous substances either in the same form, e.g. different combustible dusts, or in different forms, e.g. gases or vapours.

At article 12(3), the responsible person is directed to Schedule 1, Part 4 for measures intended to help control the risk and mitigate the detrimental effects of fire. It should be noted that Part 4 of Schedule 1 explicitly requires the responsible person to "ensure that suitable special, technical and organisational measures are designed, constructed, assembled, installed, provided and used so as to reduce risk". This requirement does not sit well with the more

⁶⁸ See article 34

⁶⁹ Enforcing authorities other than the HSE should be aware that work process is generally removed from the meaning of general fire precautions and typically remain within the jurisdiction of Health and Safety law. See article 4 interpretation in this document

⁷⁰ Enforcing authorities other than the HSE should be aware that work process is generally removed from the meaning of general fire precautions and typically remains within the jurisdiction of the HSE. See article 4 interpretation in this document

general requirements of the Order and incorporates requirements that are explicitly removed from the meaning of general fire precautions. This presents an apparent conflict. In matters of conflict consideration should be given to conducting a joint inspection e.g. fire authority with HSE.

In many foreseeable encounters with dangerous substances, it is likely that inspecting officers will have an understanding of general fire precautions only and may not be in the possession of specialist knowledge relating to such things as 'explosion pressure relief arrangements', 'explosion suppression equipment', the 'provision of plant which is constructed so as to withstand the pressure likely to be produced by an explosion' etc.

Although such matters are written in the pages of the Order, their inclusion is not designed for enforcement by inspecting officers of Fire and Rescue Authorities, Defence Fire Services, Local Authorities or Crown Premises Inspectors, and that such matters should be referred to the HSE and that where possible a joint inspection between enforcing authorities should be arranged.

This article falls outside the scope of the usual defence of due diligence made available to the responsible person under the Order (see article 33). Note should also be taken of the fact that article 12 is a requirement subject to the term 'reasonably practicable' and as such the onus is placed on the responsible person (instead of the enforcing authority) to prove that it was not reasonable for them to have done more than they did, to satisfy the requirements of this article.

Article 12 FAQ

Q. Does the Responsible Person have to try paragraphs 12-(1) & 12-(2) before implementing Part 4 Schedule 1?

A. Yes.

Q. 12-(4)(a) Is this for HSE only?

A. HSE have the lead in this area. However, the duty under Article 12(4) is a direct duty applied by article 5 and so can be enforced as such.

Q. Is there a minimum quantity to which this article applies?

A. This is not explicitly stated but the test of reasonable practicability suggests that quantity should be assessed according to the nature of the substance, the activity being undertaken and the risk to 'relevant persons'. For example, it should not be necessary to enter a full assessment process for a bottle of bleach used for cleaning; whereas a cleaning cupboard, opening on to a dead-end escape route and containing 50 litres of bleach might be a different matter. As a general rule, corrosive liquids

should be stored on the floor and substances that could give a vigorous chemical reaction should be stored separately.

Q. What guidance is available for enforcing officers to determine if the risk is as low as reasonably practicable?

A. The risk assessment should clearly identify / illustrate the determination process undertaken by the responsible person in reducing the risk to as low as reasonably practicable and at which point it became disproportionate to take further measures.

Article 13—Fire-fighting and fire detection

The Regulatory Reform (Fire Safety) Order 2005

Fire-fighting and fire detection

- 13.** —(1) *Where necessary (whether due to the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances) in order to safeguard the safety of relevant persons, the responsible person must ensure that—*
- (a) the premises are, to the extent that it is appropriate, equipped with appropriate fire-fighting equipment and with fire detectors and alarms; and*
 - (b) any non-automatic fire-fighting equipment so provided is easily accessible, simple to use and indicated by signs.*
- (2) For the purposes of paragraph (1) what is appropriate is to be determined having regard to the dimensions and use of the premises, the equipment contained on the premises, the physical and chemical properties of the substances likely to be present and the maximum number of persons who may be present at any one time.*
- (3) The responsible person must, where necessary—*
- (a) take measures for fire-fighting in the premises, adapted to the nature of the activities carried on there and the size of the undertaking and of the premises concerned;*
 - (b) nominate competent persons to implement those measures and ensure that the number of such persons, their training and the equipment available to them are adequate, taking into account the size of, and the specific hazards involved in, the premises concerned; and*
 - (c) arrange any necessary contacts with external emergency services, particularly as regards fire-fighting, rescue work, first-aid and emergency medical care.*
- (4) A person is to be regarded as competent for the purposes of paragraph (3)(b) where he has sufficient training and experience or knowledge and other qualities to enable him properly to implement the measures referred to in that paragraph.*

Article 13 Guidance Notes

This article substantially copies out the text of certain articles of the Framework and Premises Directives. The courts can be expected to have regard to the terms of the Directives in case of doubt.

It is important to note that what responsible persons provide to comply with the requirements of this article, is for the purpose of safeguarding the safety of relevant persons in case of fire; and that the extent of such provision will become clear from the findings of the

fire risk assessment taking full account of all the relevant circumstances of the premises, including its size, contents and use. More comprehensive consideration of their needs may rely on the requirements of other legislation (including *the Disability Discrimination Act 1995* which took effect on 1 October 1999) or rest on guidance such as *Firecode* for hospital premises.

Against this background, premises must be provided with such fire extinguishers or other means for fighting fire as are appropriate. It will also be necessary to install fire detectors and fire alarms⁷¹ where, in all the circumstances referred to above, their provision is reasonably required for the protection of relevant persons.

Any non-automatic fire-fighting equipment provided in accordance with this article, such as fire extinguishers, must be simple to use, kept where it will be easily accessible and be indicated by signs as appropriate e.g. indicated in accordance with the requirements imposed by the Health and Safety (Safety Signs and Signals) Regulations 1996.⁷² In relation to fire safety signs being appropriate and durable, (pictographic) signs should be placed at appropriate points, should be properly maintained and should comply with any applicable requirements set out in Parts I to VII of Schedule 1 to those Regulations.

Responsible persons are required to take measures for fire-fighting in the premises (e.g. the drawing up of a suitable fire-fighting plan) where necessary for the purpose of safeguarding relevant persons in case of fire. Such measures as are taken will be tailored to the circumstances of the premises. Responsible persons shall nominate a sufficient number of their employees to implement those measures and ensure that they are adequately trained and equipped to carry out their responsibilities. This provision should complement rather than replace fire and rescue authorities' fire-fighting role. The intention of the Order was to:

“... make it clear that fire fighting equipment should be considered as a possible means of reducing a risk of fire spreading, providing protection and for providing assistance to others ... It should also be considered as a possible means of mitigating the detrimental effects of a fire.”⁷³

Nominated relevant persons should be able to tackle a fire if it is safe to do so and they know how to do it safely. They must not put themselves at risk to fight fire; their personal safety remains the priority. Nonetheless this priority must not be used by responsible persons to avoid compliance with this requirement. Many employers believe that to comply with this requirement involves a necessity to train some of their employees as fire-fighters. This is clearly not the case; and inspecting officers should be seeking compliance from employer responsible persons by training an adequate number of employees to undertake first aid fire-fighting duties and inherent in that training must be the teaching of employees to recognise when first-aid fire-fighting is or is not safe to implement.

⁷¹ Enforcers should be aware of the outcome of the Determination by the Secretary of State in connection with the means detection provided in hotel bedrooms (see article 36 of this document for further detail).

⁷² S.I. 1996 No. 341

⁷³ GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, Amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002, p 28, 4.57*

Inspectors will often encounter fire policies and procedures in which no-one is encouraged or trained to use fire-fighting equipment and which state that people should simply evacuate the premises. Such an approach is clearly contrary to the statement above, made by the DCLG but the impact of the approach is further considered for the information of inspectors and enforcing authorities.

It has already been stated that extinguishers are necessary when the triangle of fire can exist within premises. Assuming that a fire was to break out, there are a number of possible outcomes, with respect to fire extinguishers:

1. Extinguishers are not provided. No effort is made to fight the fire AND people escape the premises safely. Enforcing authorities are unlikely to have cause to prosecute.
2. Extinguishers are not provided. No effort is made to fight the fire AND people do not escape safely. Enforcing authorities are likely to consider prosecution.
3. Extinguishers are provided. No effort is made to fight the fire AND people escape the premises safely. Enforcing authorities are unlikely to have cause to prosecute.
4. Extinguishers are provided. No effort is made to fight the fire AND people do not escape safely. Enforcing authorities are likely to consider prosecution.
5. Extinguishers are provided. The fire is effectively tackled using fire extinguishers. Regardless of whether the evacuation procedures are successful, the risk from fire is eliminated. Benefits also include business continuity, environmental protection, fire-fighter safety etc.
6. Extinguishers are provided. An effort is made to fight the fire using fire extinguishers but fails AND all people escape unharmed. Enforcing authorities are unlikely to have cause to prosecute.
7. Extinguishers are provided. An effort is made to fight the fire using fire extinguishers, but the employee is harmed as a result. Enforcing authorities are likely to consider prosecution.

In three of the cases listed above, enforcing authorities are likely to consider prosecution. In only one of those three outcomes, have no extinguishers been provided i.e. in two of the three outcomes extinguishers have been provided and consideration to prosecution may result. On balance the responsible person might elect not to have fire extinguishers. Albeit such a decision may be contrary to the requirements of the Order, people will only be at risk from fire if there is a breakdown of the protective measures e.g. something goes wrong with the evacuation procedure. If, however, the procedures and protections operate correctly and people successfully escape the building, fire safety has been delivered and enforcing authorities are unlikely to have cause to prosecute. Enforcing authorities could reasonably require the introduction of fire fighting equipment, on the grounds that a fire could occur and that fighting the fire while it is small provides for the best outcome in case something goes wrong with the evacuation. Fighting fires while they are small offers the additional benefits of being better for business continuity, for the environment and for fire-fighter safety.

Within the fire-fighting requirement, the responsible person may have given consideration to the risk to which he is willing to expose employees. Depending on the nature of the business

and the hazards present, it may be beyond to the risk tolerance of the organisation to train staff to tackle fires in e.g. electrical equipment, flowing liquid fires, etc. Inspectors may see carbon dioxide fire extinguishers provided adjacent to the electrical intake and might question whether the responsible person really intends for employees to tackle a fire in that location with a hand-held fire extinguisher. To do so may exceed the risk tolerance of the responsible person. Inspectors should consider asking such questions, as a guide to understanding the risk approach of the responsible person and as a means to discover whether the risks have been truly assessed and whether controls appropriate to risk tolerance have been provided. Responsible persons might want to tolerate employees tackling the proverbial 'fire in a waste paper basket, subject to employees having been appropriately trained. Appropriate training should contain a decision-making process, so that employees understand when the use of an extinguisher is appropriate and can be done safely and should contain instruction on how to safely use the extinguisher to maintain personal safety and when to walk away.

In order to safeguard the safety of relevant persons in case of fire, a responsible person must also arrange such contacts with the emergency services as are necessary to give effect, in particular, to rescue work and fire-fighting. Such arrangements involve a degree of planning on the part of responsible persons. They must ensure that the emergency services are readily contactable in case a fire occurs (e.g. having a telephone available for calling the fire and rescue service and nominating a person or persons to make the call to summon the fire and rescue service). They must also liaise with the emergency services when an incident occurs, and should be asked to provide, wherever possible in advance, information required for rescue work and fire-fighting purposes (e.g. in respect of any special risks involved in the premises), so as to maximise the safety and efficiency of such work.

It is unfortunate that two very distinct requirements have been brought together under a single article in this way. There is (on the one hand) a requirement as to fire-fighting on the premises and (on the other hand) a requirement for fire alarms and fire detection. In each case our earlier interpretation at article 2 should indicate that where the hazard can be realised, something should be done to combat the hazard. In the case of providing for fire-fighting on the premises, enforcing authorities should require compliance with this article so that first aid fire-fighting can be implemented if it is safe for the trained person to do so.

Article 13 FAQ

Q. 13(1) is 'where necessary' decided by the risk assessment or by the features, activity, hazard etc?

A. For an interpretation of 'where necessary', see the FSO Guidance Note to article 2 in this document. To directly answer the question, the limits of 'where necessary' should be determined by the risk assessment, which in turn, should take in to account the features of the premises, the activity carried on there, the nature of the hazard etc.

Q. In relation to article 13(2) what is the difference between where necessary and what is appropriate? Does this paragraph only apply to paragraph 1?

A. The “where necessary” refers to whether any fire fighting equipment is needed (i.e. where the three elements to the triangle of fire could potentially come together. Where those elements cannot so come together, there can be no fire and the provision of fire-fighting equipment is not necessary). The “extent that is appropriate” is referring to the type and quantity of equipment where it has been determined that equipment is necessary.

Q. 13(3)(b) are there specific competent persons this is referring to?

A. Yes. This applies in cases where fire-fighting forms an active part of the preventive and protective measures. That is to say some employees are expected to fight a fire. Those employees must be competent for that role. It must be noted that these persons are “nominated” and so have the ability to reasonably decline the nomination (subject to article 23). This is because the role if accepted could be argued to involve a higher degree of risk than is faced by other persons present at the time of a fire albeit that the contrary view may be argued insofar as a person trained to understand when to walk away from a fire and when to extinguish incipient fires may be safer than the person without such training and skills to tackle small fires. Declining the nomination should not, generally, be regarded as a breach of article 23 if the person nominated has reasonable doubts or fears about their own health and safety if the nomination were accepted.

Q. 13(3)(c) What is meant by “necessary contacts with emergency services”?

A. Where there is a need to liaise with the emergency services about any special circumstances that may affect fire-fighting, rescue work or emergency medical care, responsible persons should arrange this. It also includes the requirement that calls for emergency assistance are directed as appropriate e.g. an automatic fire alarm to directly notify the fire and rescue service (perhaps via an Alarm Receiving Centre) and having arrangements in place compelling a person or persons to make the fire call to report the fire.

Q. What impact does the tragic fire at Grenfell Tower have on our understanding of this article; does it give rise to further considerations?

A. While the Order is primarily concerned with the ability of people to escape the risks from fire, article 13 includes a number of caveats and conditional requirements e.g. where necessary (whether due to the features of the premises) and so on. Grenfell Tower has brought in to stark relief the dangers of fire entering a building from hazards external to the building. In this sense a feature of the premises may now be seen to include e.g. the external envelope, where that envelope might represent a potential hazard to the safety of relevant persons in case of fire. Assuming that the external envelope is a feature of the premises, it would be possible to proceed to consider the requirements of this article e.g. that the premises should be, to the extent that is appropriate, equipped with appropriate fire-fighting equipment and with detectors and alarms. In certain cases, this might reasonably include the provision of fire alarm systems in buildings which might otherwise have no requirement for them. The requirements of the article go on to state at sub-paragraph

2, that what is appropriate is to be determined having regard to the dimensions and use of the premises ... etc. this might be seen to strengthen an argument for enhanced levels of fire-fighting and detection and warning, where fire hazards are without, in addition to those hazards from within the premises.

Article 14—Emergency routes and exits

The Regulatory Reform (Fire Safety) Order 2005

Emergency routes and exits

14. —(1) *Where necessary in order to safeguard the safety of relevant persons, the responsible person must ensure that routes to emergency exits from premises and the exits themselves are kept clear at all times.*

(2) *The following requirements must be complied with in respect of premises where necessary (whether due to the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances) in order to safeguard the safety of relevant persons—*

- (a) emergency routes and exits must lead as directly as possible to a place of safety;*
- (b) in the event of danger, it must be possible for persons to evacuate the premises as quickly and as safely as possible;*
- (c) the number, distribution and dimensions of emergency routes and exits must be adequate having regard to the use, equipment and dimensions of the premises and the maximum number of persons who may be present there at any one time;*
- (d) emergency doors must open in the direction of escape;*
- (e) sliding or revolving doors must not be used for exits specifically intended as emergency exits;*
- (f) emergency doors must not be so locked or fastened that they cannot be easily and immediately opened by any person who may require to use them in an emergency;*
- (g) emergency routes and exits must be indicated by signs; and*
- (h) emergency routes and exits requiring illumination must be provided with emergency lighting of adequate intensity in the case of failure of their normal lighting.*

Article 14 Guidance Notes

Where necessary to safeguard the safety of relevant persons, the responsible person must ensure that routes to emergency exits and the exits themselves are kept clear at all times of combustible materials and other obstructions. In case of failure of normal lighting circuits, emergency routes and exits requiring illumination must be provided with emergency lighting.

In accordance with the management policy of checking escape routes, consideration should be given to the maximum number of persons who can safely occupy the premises and safely evacuate the premises in case of fire. Once this evidence is obtained, the purpose of the inspection is to verify the authenticity of the answers given by the responsible person. It is

important to note that the measures implemented by the responsible person under this article are required for the purpose of safeguarding the safety of relevant persons in case of fire. The suitability of measures taken should be assessed against the findings of the inspection / audit, taking full account of all the relevant circumstances of the premises, including its size, contents, maximum number of persons likely to be present and the use of the premises.

Against this background, the emergency routes and exits must lead as directly as possible to a place of safety. There must be adequate emergency routes and exits for *everyone* to escape quickly and safely, since it is the total number of *persons* that may be present in the premises at any one time which will affect the adequacy of the emergency routes and exits provided for the purposes of evacuation. The fire risk assessment will identify any persons for whom special arrangements may need to be made by virtue of their age, state of health and physical and mental abilities or, in some circumstances, their location and activity in the workplace.

It is important to emphasise the door requirements in the context of their purpose as set out in the preamble to the paragraph ("...where necessary ... in order to safeguard the safety of relevant persons in case of fire ..."). Therein lies the flexibility that moderates what would otherwise be prescriptive requirements.

With the exception of premises used for keeping persons in lawful custody or detention, exit doors (and, it follows, doors along escape routes) must not be so locked or fastened that they cannot be easily and immediately opened by any person who may need to use them in an emergency.

The emergency routes and exits must be indicated with signs where the use of signs will aid evacuation.

Where emergency routes and exits require illumination to safeguard the safety of relevant persons in case of fire, they must be provided with adequate alternative sources of illumination in case their normal lighting (natural or artificial) fails. What is provided will depend on, and be in proportion to, what is needed in all the relevant circumstances. For example, where borrowed light from street lighting is available this may be all that is required.

It should be noted that the requirements made under article 14(2) ((a)-(h)) are not absolute in their nature but are subject to being 'necessary' e.g. revolving doors may be adequate in premises that are used only by very small numbers of persons, where all persons that will use the premises are very familiar with the layout, the requirement to provide signs may not be necessary etc.

Article 14 FAQ

Q. 14(2)(b) What is the definition of danger in this context?

A. Fire and associated risks.

Q. What is the meaning of emergency lighting within the context of this article?

A. Lighting, whether from luminaires in the premises or borrowed light from outside, of sufficient intensity to allow the means of escape to be safely used in the event of a failure to the main lighting system. The necessity for emergency lighting in addition to primary lighting may depend on the times at which escape routes may be required for use e.g. premises occupied purely during daylight hours and with adequate glazing to allow the passage of light may not require emergency lighting of any kind.

Q. Can article 14(2) be used to require for example licensed premises to determine their own occupancy figures within the significant findings of their risk assessment?

A. Yes, the acknowledgement of the hazards presented by licensed premises make them a good example of having to calculate occupancy figures as a part of their compliance with article 14(2)(c) in particular.

Q. This FAQ came from a disagreement between Mechanical and Electrical consultants working on a hotel project. There was disagreement regarding an interpretation of British Standard BS 9999:2008 and Approved Document B in relation to the definition of escape when the documents state “where all occupants of the building can be expected to make an unaided escape”. The question asked whether it is acceptable for disabled occupants to make an unaided escape to a refuge area only.

A. The response to this question does not lie in BS9999 or AD’B’. The problem of evacuating disabled occupants will only present itself once the building is occupied, and the Order applies.

The following extract is taken from the House of Commons Regulatory Reform Committee Ninth Report of Session 2004-05, Draft Regulatory Reform (Fire Safety) Order 2005.

The House of Commons said:

“Our report on the proposed Order noted with concern that, as drafted, it failed to make explicit that the place of safety to which the required route(s) of escape from a premises must give access should be a place of ultimate safety i.e. that such a place must itself provide for further means of escape should itself subsequently become exposed to risk by expansion of the area affected by fire...”

The Department’s response:

The Department states that it considers the Order as drafted would place responsible persons under a legal requirement to provide a means of ultimate escape from the risk of fire on premises under their control. This is because “a means of escape leading to an area in the vicinity of the premises which is, or might be, exposed to the risk of fire could not properly be considered to be a place of safety.”

Consequently, the Department amended the previous definition to that which is now contained in the Order:

“Place of safety’ in relation to premises, means a safe area beyond the premises.”

Consequently, the response to the question posed is that an escape to a refuge does not satisfy the requirements of the Order unless the responsible person has in place further means to assist with evacuation e.g. a PEEP or staff procedure that would assist.

Article 15—Procedures for serious and imminent danger and for danger areas

The Regulatory Reform (Fire Safety) Order 2005

Procedures for serious and imminent danger and for danger areas

15. —(1) *The responsible person must—*

(a) establish and, where necessary, give effect to appropriate procedures, including safety drills, to be followed in the event of serious and imminent danger to relevant persons;

(b) nominate a sufficient number of competent persons to implement those procedures in so far as they relate to the evacuation of relevant persons from the premises; and

(c) ensure that no relevant person has access to any area to which it is necessary to restrict access on grounds of safety, unless the person concerned has received adequate safety instruction.

(2) Without prejudice to the generality of paragraph (1)(a), the procedures referred to in that sub-paragraph must—

(a) so far as is practicable, require any relevant persons who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;

(b) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and

(c) save in exceptional cases for reasons duly substantiated (which cases and reasons must be specified in those procedures), require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.

(3) A person is to be regarded as competent for the purposes of paragraph (1) where he has sufficient training and experience or knowledge and other qualities to enable him properly to implement the evacuation procedures referred to in that paragraph.

Article 15 Guidance Notes

The responsible person has to establish procedures that will keep people safe from fire on the premises. In every case, the responsible person has to bring these procedures in to being if it becomes necessary at any time i.e. if fire breaks out in or on the premises; the procedures must be implemented. Therefore, the procedures must be practical for the circumstances of the case and as such are likely to vary from premises to premises and may vary with the

number of trained staff members present, the training they have been given and the nature of the occupancy (among others).

In terms of the number of people needed; all that is required are enough people to give effect to the established procedures. A different number of people may be required to carry out duties under other enactments. Clearly these numbers could vary in the extreme. For example, a single guard on a railway platform might be able to direct people off a platform that is affected by fire; whereas a fire in a nursing home with multiples of bed-ridden, dependent residents may require several trained nursing staff to move each resident to a safer area. In many cases this requirement may be satisfied through the role of a fire marshal, but this will depend heavily on the nature of the training the fire marshal has been given and their ability to carry the role into effect. Where no-one is employed, there is no-one that can be appointed. It should also be noted that the standard expected of the responsible person / duty holder is lower for premises in which no-one is employed i.e. to take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe.

15(2)(a) is a general requirement that whatever procedures the responsible person puts in place, they must enable relevant persons to be informed of the fire and of the steps taken or to be taken to protect them from it. In most cases this requirement is satisfied, for non-employees, by the provision of 'what to do in case of fire' notices that outline what relevant persons are expected to do. Although this article makes no requirement to provide any preventive or protective measures beyond 'people to implement the procedures', relevant persons are to be made aware of the nature of the hazard. In most cases this will be via a fire alarm system, which inherently informs people of the nature of the problem i.e. a fire in the premises, although the provision of the alarm is not made within this article. Equally the steps to be taken as a result of the sounding alarm are also generally well understood (whether or not people are ultimately motivated to move). In many cases the role of the nominated persons (who could be fire marshals) may assist in this regard.

Sub-paragraphs 2(b) and 2(c) relate to workplaces and are therefore requirements for the 'employer' responsible person. These requirements hold respective expectations that employees will respond quickly to any notification of serious and imminent danger (taking it upon themselves to shut-down work processes or stop work as necessary), and that employees will not return to work until they have been informed that it is safe for them to do so. Employees are expected to follow the procedures put in place to protect them by proceeding to a place of safety.

The enforcing authority should establish the presence of procedures to be followed in respect of danger from fire, and during an audit, needs to consider the following:

- Has the responsible person carried out drills to practice it?
- What training have staff members received (see article 21)?
- Is there any evidence that drills have taken place?
- Have persons been given specific roles during evacuation?
- What additional measures are in place for these areas?
- Have relevant persons been informed of the nature of the hazard and the steps to be taken?

Article 15 FAQ

Q. **15(1)(a) is this the emergency plan?**

A. No. The Order contains no term 'emergency plan'. However, the 'serious and imminent danger' referenced in the title to article 15 must relate directly to fire, due to the interpretation given to "safety" at article 2 as well as to the duty at article 5(5) to provide general fire precautions in respect of relevant persons. Article 15(1) would satisfy, in large part, the general fire precaution at 4(1)(f) measures in relation to the arrangements for action to be taken in the event of fire Insofar as there is no emergency plan, article 15(1)(a) does deal with fire procedures, rather than with emergency plans for other events.

Q. **15(1)(b) What specific competent persons are they referring to?**

A. Persons who will carry the emergency plan into action. A common example could be fire marshals / wardens. It must be noted that these persons are "nominated" and so have the ability to decline the nomination (subject to article 23). Declining the nomination should not, generally be regarded as a breach of article 23 if the person nominated has reasonable doubts or fears about their own health and safety if they were to accept the nomination (see The Fire Safety (Employees' Capabilities) (England) Regulations 2010)⁷⁴

Q. **15(2) Does this only apply to HSE?**

A. No, the specific issues under 15(2) are equally applicable to general fire precautions and the emergency procedures to be followed. For example, under 15(2)(c) there is a general duty to prevent persons from working in an area where danger remains, unless (exceptionally), there is a substantiated reason e.g. it may be necessary for a person to give specialist assistance / direction / support to emergency crews in exceptional circumstances (and under the direction of the Fire and Rescue Service).

Q. **15(1)(a) and 15(1)(b) How does the responsible person ensure that procedures to be followed in the event of fire are appropriate and effective for circumstances in which premises have no staff to implement those procedures, e.g. a hotel without the presence of overnight staff?**

A. There are a number of requirements made of responsible persons under article 15:

1. establish appropriate procedures to be followed in the event of fire;
2. give effect to those procedures, when fire occurs; and
3. nominate people to give effect to those procedures.

⁷⁴ SI 2010 No. 471, the Fire Safety (Employees' Capabilities) (England) Regulations 2010

A responsible person must not only create procedures for the premises but set up those procedures on a firm or permanent basis in order to have established them.

Having satisfied the first requirement, the responsible person must be sure that the established procedures will be brought into effect in case of fire. In the case of the un-staffed hotel, there will be no employee present that has been trained in (or is otherwise familiar with) the established procedures. The only mechanism by which the procedures may be brought into effect might be e.g. by the sounding of an alarm when a fire is detected and by associated instructional signage provided for guests to read and act upon.

Article 15(1)(b) is not a 'where necessary' requirement; it is explicit. However, if there are no employees, there can be no nominations. Equally, where no employees are present, the duty owed extends only to "take such general fire precautions as may reasonably be required ... to ensure that the premises are safe".

It is worth noting that the only other part of the Order in which article 15(1)(b) is mentioned, is at article 19(1)(d), which states that employees must be informed of the identity of persons appointed to implement evacuation procedures. This might imply that the requirement at 15(1)(b) is employee focussed and is not relevant to relevant persons who are not employees.

Enforcing Authorities may be able to argue that, without persons giving effect to evacuation procedures, relevant persons will be at risk in case of fire. In such cases, the responsible person might argue that there are no employees and therefore no one to nominate or that with no employees present there is no duty to nominate persons to implement their procedures.

Other cases exist in which there may be no staff present to implement safety procedures e.g. village or town halls hired for private functions, Youth Hostel premises, holiday rentals, etc. wherein 'fire action notices', alarm systems and appropriate exits provide for adequate general fire precautions to ensure that the premises are safe.

Q. Does the tragic fire at Grenfell Tower have additional implications with respect to the requirements of this article?

A. The requirement is to give effect to appropriate procedures in case of fire to ensure the safety of employees or to otherwise ensure the premises are safe. At Grenfell Tower and Lackanal House, the procedures associated with stay-put / defend in place principles have been severely tested and found wanting, when the risk from fire is greatest. The principles of stay-put / defend in place remain extant but there must be consideration given to the nature of potential fire hazards and the procedures that might best secure safety. This should form part of the risk assessment process.

Indeed, any assumptions that might have been made with respect to the evacuation strategy for high-rise residential buildings e.g. the assessment relates to a block of flats, therefore the evacuation strategy is stay put should be challenged. It may be more desirable to approach the situation from the following point of view; the

assessment relates to a block of flats, an appropriate evacuation strategy could be stay put, but before reaching a decision, do the fire precautions in the building support it? How might the decision be influenced by the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances? Enforcing authorities might consider robustly challenging assumptions-based evacuation methods, working instead to determine firm grounds from which informed decisions can be made.

Responsible persons cannot be expected to nominate persons to implement their procedures, when there is no one employed in the building. Where persons are employed in the building, their ability to rouse occupants may be severely limited in the event of fire (especially residents that reside above the 'fire floor'. In such cases the means of communicating with relevant persons who are not employees is likely to be fairly basic, i.e. via safety signs and notices. Additional effort might be made, if the responsible person / duty holder is able to undertake more detailed communications with residents e.g. through cooperation and coordination, on the grounds that both the responsible person and the residents share duties under the Order and should therefore share necessary fire safety information.

Article 16—Additional emergency measures in respect of dangerous substances

The Regulatory Reform (Fire Safety) Order 2005

Additional emergency measures in respect of dangerous substances

16. —(1) *Subject to paragraph (4), in order to safeguard the safety of relevant persons arising from an accident, incident or emergency related to the presence of a dangerous substance in or on the premises, the responsible person must ensure that—*

(a) information on emergency arrangements is available, including—

(i) details of relevant work hazards and hazard identification arrangements; and

(ii) specific hazards likely to arise at the time of an accident, incident or emergency;

(b) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs;

(c) where necessary, before any explosion conditions are reached, visual or audible warnings are given and relevant persons withdrawn; and

(d) where the risk assessment indicates it is necessary, escape facilities are provided and maintained to ensure that, in the event of danger, relevant persons can leave endangered places promptly and safely.

(2) *Subject to paragraph (4), the responsible person must ensure that the information required by article 15(1)(a) and paragraph (1)(a) of this article, together with information on the matters referred to in paragraph (1)(b) and (d) is—*

(a) made available to relevant accident and emergency services to enable those services, whether internal or external to the premises, to prepare their own response procedures and precautionary measures; and

(b) displayed at the premises, unless the results of the risk assessment make this unnecessary.

(3) *Subject to paragraph (4), in the event of a fire arising from an accident, incident or emergency related to the presence of a dangerous substance in or on the premises, the responsible person must ensure that—*

(a) immediate steps are taken to—

(i) mitigate the effects of the fire;

(ii) restore the situation to normal; and

(iii) inform those relevant persons who may be affected; and

(b) only those persons who are essential for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with—

(i) appropriate personal protective equipment and protective clothing; and

(ii) any necessary specialised safety equipment and plant,

which must be used until the situation is restored to normal.

(4) Paragraphs (1) to (3) do not apply where—

(a) the results of the risk assessment show that, because of the quantity of each dangerous substance in or on the premises, there is only a slight risk to relevant persons; and

(b) the measures taken by the responsible person to comply with his duty under article 12 are sufficient to control that risk.

Article 16 Guidance Notes

This article imposes various duties on the responsible person to make sure that employees and other relevant persons are safe in the event of an accident or emergency involving dangerous substances. In the case of an accident or emergency involving dangerous substances the immediate vicinity could be quite wide.⁷⁵

The responsible person, subject to the risk assessment, must ensure that

- (a) information on emergency arrangements is available,
- (b) suitable warning and other communication systems are in place,
- (c) any necessary pre-explosion warning is given, and people withdraw,
- (d) escape facilities are provided and maintained,
- (e) information is provided to relevant accident and emergency services,
- (f) information is displayed at the premises, and
- (g) steps are taken to mitigate fires, restore the situation to normal and inform relevant persons.

In the event of the premises requiring post-incident repair or other necessary work, the responsible person must

- (a) take immediate steps and permit only essential persons to the affected area and
- (b) provide PPE, specialised equipment and plant.

⁷⁵ See article 2 – Interpretation “Relevant Persons” in this document

This article does not apply if the results of the risk assessment show that, because of the quantity of each dangerous substance in or on the premises, there is only a slight risk to relevant persons and the measures taken by the responsible person to comply with his duty under article 12 are sufficient to control that risk. This article looks at the extra measures the responsible person needs to take in respect of the dangerous substances in or on the premises.

In similarity with article 12, this article appears to step beyond the requirement to provide 'general fire precautions'⁷⁶ insofar as, at paragraph (1) it discusses safeguarding the safety of relevant persons arising from "an accident, incident, or emergency related to the presence of a dangerous substance in or on the premises".⁷⁷

It is clear from the title of article 16 that this article is intended to provide 'additional emergency measures', implying a requirement for more than those measures provided for elsewhere under the Order. This presents another conflict within the pages of the Order because the requirements imposed by its various articles should be provided to a standard that will provide safe premises for relevant persons and ensure the safety of employees. This would imply that where the safety provided from the various articles of the Order are insufficient, that more would be expected to be done under those articles so that safety is maintained.

When the requirements of article 16(3) are considered, which are concerned with "fire arising", the generality of article 16(1) clearly goes beyond the parameters of the Order, which are limited to the provision of general fire precautions⁷⁸. Within the requirements at article 16(3) is the requirement to 'restore the situation to normal' (article 16(3)(a)(i)), which may be taken to mean the risk to human health has been adequately controlled or removed.

Many of the requirements made at paragraph (1) of this article should be satisfied from other parts of the Order e.g. the provision of warning devices at 16(1)(b) and 16(1)(c) may be dealt with adequately by article 13(1)(a), the provision of suitable escape should be provided by article 14 etc. However, provisions may have to be tailored to any increased risk associated with dangerous substances. Assessors and inspectors should be mindful that the ultra-fast fire growth rate, or explosion risk, posed by dangerous substances may minimise the available safe evacuation time (ASET). This may render typical means of escape and means of detection & warning benchmarks (as enforced under Articles 8, 13 and 14) insufficient to secure the safety of relevant persons. Article 16 may therefore be seen to enhance safety measures, where necessary, so that e.g. persons can be withdrawn before explosion conditions are reached, suitable escape facilities are provided, etc. Inspecting officers should therefore give consideration to levels of compliance with these provisions in order to assess whether relevant persons are able to make a safe escape in case of a fire, within a reasonable period of time (relative to the risk). In some circumstances this will require consideration of gas detection, shortened travel distances, strengthened escape routes, and procedures to withdraw staff. Such consideration may require liaison with the Health and Safety Executive.

⁷⁶ See interpretation to article 4 and its relationship to dangerous substances.

⁷⁷ This requirement could be based on an old requirement of the Fire Precautions Act 1971 at Section 3(1)(b), which dealt with the keeping of explosives or highly flammable materials anywhere under in or on the building.

⁷⁸ See article 5(5)

Article 16(2) requires the responsible person to make information available to those emergency services (whether internal or external) that might be called on to help in an emergency. The information to be provided is:

- The procedures put in place for serious and imminent danger and for danger areas;
- Details of hazards and how hazards can be identified;
- Specific hazards likely to arise in an emergency; and
- Escape facilities provided for relevant persons to safely leave dangerous places

The information must, not only be provided, but where necessary must also be displayed at the premises.

To satisfy paragraph 3 – in the event of fire, the responsible person must ensure that immediate steps are taken to mitigate the effects of the fire, restore the situation to normal, and inform relevant persons who may be affected. The responsible person must also ensure that only essential personnel are permitted in the affected area, and they are issued with protective equipment and clothing, and safety equipment.

Again (as with article 12) where inspecting officers encounter dangerous substances and are in any doubt as to the relationship between general fire precautions and the presence of dangerous substances; a joint inspection with the HSE should be arranged. This might imply that the requirements of article 16 are provided for enforcement by the HSE.

Responsible persons are not required to make these additional emergency arrangements where they assess that there is only a slight risk because of the quantity of each substance present and because the control measures they have put in place to fulfil the requirements of other safety or fire legislation are sufficient to control that risk. For example, in respect of fire, the normal emergency procedures, including escape routes and means of giving warning already provided in the workplace may be assessed to be sufficient.

Further information relating to this article and guidance for enforcing authorities is contained in Appendix 3 to this document.

Article 16 FAQ

Q. Does this only apply when measures taken in article 12 are not sufficient?

A. The article applies unless (a) the results of the risk assessment show that because of the (small) quantity of each dangerous substances in or on the premises there is only a slight risk to relevant persons; and (b) the measures for elimination or reduction of risk from dangerous substances taken in accordance with article 12 are sufficient to control the slight risk that is present. Both (a) and (b) must be satisfied for article 16 to be disapplied.

Q. 16(1)(b)(c) Are these HSE?

- A. Predominantly yes, but this can also be considered in relation to the adequacy of the emergency plan and the fire warning arrangements.

Q. 16(2) Is this to replace HAZCHEM?

- A. No. HAZCHEM is typically associated with dangerous substances being carried on vehicles and it should be noted that where a vehicle excise license is in force, the Order does not apply.

HAZCHEM⁷⁹ signage may be encountered on buildings and might be suitable and sufficient but other legislation⁸⁰ that affects the premises or substances stored therein might require it to be updated.

More generally, signage might be required under the Order in respect of making information available for emergency services and ensuring that information is displayed under 16(1)(a) to satisfy article 16(2)(b).

Q. 16(3) Does this only affect a fire arising from an accident or spillage?

- A. No. It affects any accident, incident or emergency that gives rise to a fire involving dangerous substances. The key point is that there is a fire that has arisen because of, or involving, dangerous substances on the premises.

Q. 16(3)(a)&(b) How much of this is HSE?

- A. It is not all for HSE. These matters include risk reduction through mitigation of the effects of the fire and removing the risk through extinguishing a fire.

⁷⁹ N.B. With the introduction of 'The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004' on 10th May 2004, UK legislation became almost totally aligned with ADR

⁸⁰ Other legislation might be required by e.g. The Dangerous Substances (Notification and Marking of Sites) Regulations 1990, The Health and Safety (Safety Signs and Signals) Regulations 1996, Petroleum (Consolidation) Act 1928 c.32, Dangerous Substances and Explosive Atmospheres Regulations etc.

Article 17—Maintenance

The Regulatory Reform (Fire Safety) Order 2005

Maintenance

17. —(1) Where necessary in order to safeguard the safety of relevant persons the responsible person must ensure that the premises and any facilities, equipment and devices provided in respect of the premises under this Order or, subject to paragraph (6), under any other enactment, including any enactment repealed or revoked by this Order, are subject to a suitable system of maintenance and are maintained in an efficient state, in efficient working order and in good repair.

(2) Where the premises form part of a building, the responsible person may make arrangements with the occupier of any other premises forming part of the building for the purpose of ensuring that the requirements of paragraph (1) are met.

(3) Paragraph (2) applies even if the other premises are not premises to which this Order applies.

(4) The occupier of the other premises must co-operate with the responsible person for the purposes of paragraph (2).

(5) Where the occupier of the other premises is not also the owner of those premises, the references to the occupier in paragraphs (2) and (4) are to be taken to be references to both the occupier and the owner.

(6) Paragraph (1) only applies to facilities, equipment and devices provided under other enactments where they are provided in connection with general fire precautions.

Article 17 Guidance Notes

Essentially this means that any equipment and devices provided to protect relevant persons from the dangers of fire, such as fire extinguishers, alarm systems and emergency lighting, shall be subject to a suitable system of maintenance: they must be regularly checked and properly maintained (including inspection and testing by a competent person, as necessary) at suitable intervals and any faults found rectified as quickly as possible. This article covers anything that has been provided for the purposes of fire safety.

The requirement for maintenance is a three-part test. The test consists of maintaining the equipment, facilities and devices:

- In an efficient state;
- In efficient working order; and
- In good repair.

Using the example of a fire alarm system, the three-part test would apply as follows. The fire alarm would have to be in working order i.e. when operated, the fire alarm is capable of raising a warning of fire (audible, visual etc. as designed and appropriate to the risk). Although working as it should it is possible the fire alarm system incorporates sounders hanging off the wall dangling by its cabling, call points are not properly fixed to the wall etc. In this case, although working as it should, the alarm is not in good repair. Having checked that the fire alarm is in working order and in good repair, it remains to determine whether the fire alarm is in an efficient state. Evidence of e.g. a weekly test being conducted tests circuitry from the operated call point to the panel and from the panel to the sounder or warning device. This test does not however check other devices associated with the system or all the cabling throughout the system etc. To satisfy the requirement to maintain the system, in this example, in an efficient state it is reasonable to expect a system of servicing to be in place, maintaining the system to some recognised standard (usually a British Standard). British Standards tend to include requirements or guidance pertaining to the keeping of records, usually in a log book, which may ensure that records are kept, but no requirement can be made to this effect directly under the Order.

Clearly equipment and devices need to do their job properly and must therefore be in a capable state when needed. For example, where any equipment (e.g. a fire alarm) is electrically operated, the necessary supply of electricity must (unless switched off for the purpose of altering, maintaining or testing the electrical system) be kept switched on at all times when the premises are occupied.

When maintenance is being undertaken it may be necessary to make adequate alternative provision to compensate for any deficiencies in the normal fire precautions. Therefore, where the fire risk assessment is required to be recorded, any alternative provision needs to be accounted for within that assessment. An example would be the maintenance of a sprinkler system provided in accordance with Ordinary Hazard or High Hazard systems – clearly arrangements must be made for some alternative solution for the period that the sprinklers are inactive due to servicing or maintenance.

Enforcing authorities cannot impose frequencies on maintenance (e.g. requiring that the fire alarm must be maintained annually) though a recommendation to this effect may be made. Where the fire alarm has been provided and installed to a British Standard; it is reasonable to expect that standard to be met by the responsible person, in terms of maintenance and recording systems etc, however there is no requirement under the Order for records of test to be kept. It should be noted that the enforcing authority cannot take action against the responsible person under this article for fire safety measures they do not have (e.g. a missing fire door cannot be recorded as a maintenance failure on the grounds that it is not there to maintain).

All responsible persons and duty holders of any premises (inclusive of single private dwellings where they form part of the building), which may have an impact on the provision and maintenance of fire safety provisions have a duty to co-operate.

Of particular interest here are situations in which a common fire safety system is installed; and extends into parts of the premises to which the Order does not apply. The responsible person is expected to be allowed access to those areas for the purposes of maintaining the common protective system in its entirety.

For example, consider premises in which a common fire alarm and emergency lighting system is installed throughout. The premises are occupied both commercially (to which the Order applies) and as domestic dwellings (to which the Order does not apply). The protective systems have detector heads and luminaires in the domestic dwellings in addition to the commercial and common areas of the premises. The responsible person is imposed with a duty to maintain the whole of each system (even in those areas to which the Order does not apply). The CLG, at the time the Order was written, held an expectation that:

“under the terms of any lease, tenancy or licence agreement, the responsible person would be allowed reasonable access for the purpose of maintaining fire safety equipment throughout any premises, including those used as private dwellings.”⁸¹

⁸¹ House of Commons Regulatory Reform Committee, Draft Regulatory Reform (Fire Safety) Order 2005 Ninth Report of Session 2004-05 Report, together with formal minutes and written evidence, HC 495, [online], 2005, London, The Stationery Office Limited, Available from: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmdereg/495/495.pdf> [Accessed 25 November 2014], Para 31

Article 17 FAQ

Q. Can it be necessary to maintain it in efficient state, in efficient working order and in good repair but not subject to a suitable system of maintenance?

A. The system of maintenance is inherent to the requirement. The ‘three-part test’ of efficient state, efficient working order and good repair is an “and” requirement so all must be complied with. This is a very useful tool during audits as the Order allows for an auditor to ‘dig’ in to the maintenance practices for the premises. E.g. fire doors to not close fully, the process can be audited by checking means by which employees⁸² might be enabled to report the door faulty, how that information is received by the responsible person and the maintenance schedule under which the repair is listed and prioritised and the proposed date for repairing the door.

Q. 17(3) Can you explain this in relation to HMO or premises with private flat e.g. caretaker?

A. It must be noted that the occupier is required to co-operate by virtue of article 17(4) therefore it is possible to enforce on an occupier of a domestic premises where that person’s premises may impact upon the fire safety of the remainder of the premises. However, the extent to which that occupier may be considered to be a person on whom duties are imposed by virtue of article 5(3) will depend on the circumstances of the case. The article was intended to provide landlords with some backing that they could cite in the civil courts. Where the responsible person breaches article 17 because the occupier of parts of the premises to which the Order does not apply will not co-operate (for example over maintenance of a fire alarm system that extends into a private flat) then that occupier could be prosecuted by virtue of article 32(10) or may be held as a duty holder under article 5(4).

Q. 17(4) Is this in addition to article 22?

A. Yes, this is a specific co-operation requirement about persons who occupy premises to which other parts of the Order (such as article 22) do not apply. See also 17(3) above.

Q. Can a system be accepted that does not comply with a current British Standard?

A. The standard has to be suitable sufficient and appropriate to the risk. Where these standards are met it is not unreasonable to accept some other recognised standard such as a US standard for example

Q. Is there a requirement under the Order to maintain records of scheduled maintenance?

A. The responsible person must have arrangements in place for the planning, organisation, control, monitoring and review of preventive and protective measures and under specified conditions, must record those arrangements (see article 11 of this document). This means scheduled maintenance should be subject to ‘planning,

⁸² See article 23(1)(c)(ii) Employee Duties

organisation, control, monitoring and review' (and should record these processes under prescribed conditions) but there is no express requirement to record the results of routine testing, although this would be good practice and allow the responsible person to evidence that testing has taken place, should the need arise.

Article 18—Safety assistance

The Regulatory Reform (Fire Safety) Order 2005

Safety assistance

18. —(1) *The responsible person must, subject to paragraphs (6) and (7), appoint one or more competent persons to assist him in undertaking the preventive and protective measures.*

(2) *Where the responsible person appoints persons in accordance with paragraph (1), he must make arrangements for ensuring adequate co-operation between them.*

(3) *The responsible person must ensure that the number of persons appointed under paragraph (1), the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of the premises, the risks to which relevant persons are exposed and the distribution of those risks throughout the premises.*

(4) *The responsible person must ensure that—*

(a) *any person appointed by him in accordance with paragraph (1) who is not in his employment—*

(i) *is informed of the factors known by him to affect, or suspected by him of affecting, the safety of any other person who may be affected by the conduct of his undertaking; and*

(ii) *has access to the information referred to in article 19(3); and*

(b) *any person appointed by him in accordance with paragraph (1) is given such information about any person working in his undertaking who is—*

(i) *employed by him under a fixed-term contract of employment, or*

(ii) *employed in an employment business,*

as is necessary to enable that person properly to carry out the function specified in that paragraph.

(5) *A person is to be regarded as competent for the purposes of this article where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the preventive and protective measures.*

(6) *Paragraph (1) does not apply to a self-employed employer who is not in partnership with any other person, where he has sufficient training and experience or knowledge and other qualities properly to assist in undertaking the preventive and protective measures.*

(7) *Paragraph (1) does not apply to individuals who are employers and who are together*

carrying on business in partnership, where at least one of the individuals concerned has sufficient training and experience or knowledge and other qualities —

(a) properly to undertake the preventive and protective measures; and

(b) properly to assist his fellow partners in undertaking those measures.

(8) Where there is a competent person in the responsible person's employment, that person must be appointed for the purposes of paragraph (1) in preference to a competent person not in his employment.

Article 18 Guidance Notes

These 'safety assistants' are persons the responsible person appoints to help do things such as maintenance or to implement training or prepare the emergency plan. The requirement is a general one and is without prejudice to specific requirements relating to specific precautions (such as nomination of competent persons under article 13(3)(b)). It should be noted that these persons are 'appointed' to a job or function and are not 'nominated'.

For an interpretation of competent person as it applies to this article, see the interpretation contained in article 2 of this document.

Competent persons may be appointed in a number of guises, such as:

- Fire Alarm Engineer
- Maintenance Engineer
- Specialist advisor for dangerous substances etc.

Note should be taken of the fact that the requirement made by article 18 is for assistance in providing the preventive and protective measures; i.e. those measures required as a consequence of carrying out a fire risk assessment. The requirement does not relate to the carrying out of a fire risk assessment. The fire risk assessment is a duty placed directly on the responsible person at article 9. Article 18 concerns itself with the physical undertaking of preventive and protective measures (or general fire precautions).

The responsible person must ensure all appointees co-operate in fulfilling the function and ensure that those they appoint to assist, are given all the information, support and facilities in relation to the premises, risks and layout, to be able to assess all the risks. This applies to non-employed persons – essentially anyone who is appointed to assist with fire safety preventative and protective matters must be given the tools to do the job.

More complicated situations will require the competent persons to have a higher level of knowledge and experience. More complex or highly technical situations will call for specific applied knowledge and skills, which can be offered by appropriately, qualified specialists.

Where self-employed persons or an employed person has the relevant skills to satisfy the undertaking of necessary preventive and protective measures, the responsible person does not need to employ another competent person to do this for them.

An employee must be chosen as the safety assistant in preference to bringing in an external

safety assistant. If there is no employee with relevant competence to give safety assistance with general fire precautions in the organisation; the responsible person should enlist an external service or person to give relevant safety assistance. In some circumstances a combination of internal and external competence might be appropriate, recognising the limitations of the internal competence.

The appointment of such competent persons to provide safety assistance does not absolve the employer from responsibilities for fire safety under the Order. It can only give added assurance that these responsibilities will be discharged adequately.

Article 18 FAQ

Q. Can a person appointed to give assistance under article 18 be prosecuted?

A. If a person has been given the relevant and necessary information to carry out a task and has sufficient training and experience and knowledge and or other qualities to be deemed competent for the task appointed, then failure to undertake their duties to a competent standard gives rise to the potential to prosecute⁸³.

⁸³ See GM FRA v Morris

Article 19—Provision of information to employees

The Regulatory Reform (Fire Safety) Order 2005

Provision of information to employees

19. —(1) *The responsible person must provide his employees with comprehensible and relevant information on—*

- (a) the risks to them identified by the risk assessment;*
- (b) the preventive and protective measures;*
- (c) the procedures and the measures referred to in article 15(1)(a);*
- (d) the identities of those persons nominated by him in accordance with article 13(3)(b) or appointed in accordance with article 15(1)(b) ; and*
- (e) the risks notified to him in accordance with article 22(1)(c).*

(2) *The responsible person must, before employing a child, provide a parent of the child with comprehensible and relevant information on—*

- (a) the risks to that child identified by the risk assessment;*
- (b) the preventive and protective measures; and*
- (c) the risks notified to him in accordance with article 22(1)(c),*

and for the purposes of this paragraph, "parent of the child" includes a person who has parental responsibility, within the meaning of section 3 of the Children Act 1989, for the child.

(3) *Where a dangerous substance is present in or on the premises, the responsible person must, in addition to the information provided under paragraph (1) provide his employees with —*

- (a) the details of any such substance including—*
 - (i) the name of the substance and the risk which it presents;*
 - (ii) access to any relevant safety data sheet; and*
 - (iii) legislative provisions (concerning the hazardous properties of any such substance) which apply to the substance; and*
- (b) the significant findings of the risk assessment.*

(4) *The information required by paragraph (3) must be—*

- (a) adapted to take account of significant changes in the activity carried out or methods or work used by the responsible person; and*

(b) provided in a manner appropriate to the risk identified by the risk assessment.

Article 19 Guidance Notes

This article applies to the employer responsible person only.

Where the responsible person is an employer then he must provide his employees with detailed information regarding issues relating to fire safety, relevant to them and to their area(s) of work. (Note should be taken of articles 40 and 41 relating to employers not charging employees for providing anything done to comply with the Order, and the general duty to consult employees respectively).

Provision of information to employees should be identified as part of the fire risk assessment. Inspectors may have ascertained evidence for this section through previous questioning; however, it may be useful to ask if there is a staff notice board where information is displayed, check with their intranet site or question staff during an audit / inspection.

Relevant information on; risks identified by the fire risk assessment, on the preventive measures taken to prevent fires occurring, and protective measures to help keep relevant persons safe from an outbreak of fire, should be provided. Explicitly this article requires information on emergency procedures and the identities of those with duties under articles 13(3)(b) and 15(1)(b) (first aid fire-fighters and fire wardens respectively). In addition, article 19(1)(e) requires employers to inform their employees of fire risks (to the employees) from the activities of any other responsible person (e.g. in multi-occupied premises).

The information should be provided to employees in a form which takes account of any language difficulties or disabilities. Information can be provided in whatever form is most suitable in the circumstances, as long as it can be understood by all employees; it could include providing translation, using interpreters, or replacing written notices with clearly understood symbols or diagrams.

This article applies to all employees, including trainees and those on fixed-duration contracts.

While a child⁸⁴ is at work, the requirements to provide information are the same as for other employees but the information is to be provided to the parent or guardian of that child. This information can be provided in any appropriate form, including verbally or directly to the parents or guardians, or in the case of work experience, via an organisation such as a school, the work experience agency or, if agreed with the parents, via the child him or herself, as long as this is considered a reliable method. Good practice would see some record being maintained of the information that has been provided to parents / guardians.

Employees should also be informed of dangerous substances and the potential danger they pose, along with the provision of the relevant safety data sheets and any regulations that apply. Where the work practice with the dangerous substance changes the risk then the information needs to be adapted accordingly, for example the way in which the substance is used may present a different risk from that presented by its storage.

⁸⁴ See Article 2 for interpretation of 'child'

Article 19 FAQ

Q. What is the best way to show compliance with these articles?

- A. Written records are ideal because they are more easily audited and offer a straight forward way in which the responsible person can demonstrate compliance. Where written records are not maintained, then employees and employers (and self-employed from outside undertakings) should be able to demonstrate an appropriate level of knowledge. This may be achieved by way of questioning. Where a written risk assessment is required, then provision of information should be a significant finding and the inspecting officer should ensure this is provided.

Q. Can volunteers be classified as employees?

- A. They can, it will depend on the existence of an employer / employee relationship, which may be express or implied – see FSO Guidance Notes for ‘employee’ at article 2 in this document.

Article 20—Provision of information to employers and the self-employed from outside undertakings

The Regulatory Reform (Fire Safety) Order 2005

Provision of information to employers and the self-employed from outside undertakings

20. —(1) *The responsible person must ensure that the employer of any employees from an outside undertaking who are working in or on the premises is provided with comprehensible and relevant information on—*

(a) the risks to those employees; and

(b) the preventive and protective measures taken by the responsible person.

(2) *The responsible person must ensure that any person working in his undertaking who is not his employee is provided with appropriate instructions and comprehensible and relevant information regarding any risks to that person.*

(3) *The responsible person must—*

(a) ensure that the employer of any employees from an outside undertaking who are working in or on the premises is provided with sufficient information to enable that employer to identify any person nominated by the responsible person in accordance with article 15 (1)(b) to implement evacuation procedures as far as those employees are concerned; and

(b) take all reasonable steps to ensure that any person from an outside undertaking who is working in or on the premises receives sufficient information to enable that person to identify any person nominated by the responsible person in accordance with article 15 (1)(b) to implement evacuation procedures as far as they are concerned.

Article 20 Guidance Notes

The responsible person must ensure that information is provided to the employer of employees from outside undertakings who are working on the responsible person's premises. This information must present the risks faced by that employer's employees in an understandable manner so that the employer can quantify those risks, as they relate to his employees. The information must be relevant to the work the employees will be undertaking.

This article is written from the aspect of the premises (meaning that to which the Order applies). In this article the term 'outside undertakings' refers to employees not under the direct control of the responsible person for the premises, for example contractors. This is to ensure that the employer who may be requiring his employees to enter premises to carry out work is aware of the risks and the control measures that have been put in place.

The responsible person must ensure that any person working in the premises from outside undertakings are aware of the risks to them and any relevant information and instructions i.e. fire procedures. Article 20(3) requires that the employer and employees (or other working

persons) from outside undertakings are made aware of the person nominated to implement fire procedures (fire wardens).

Information may be provided through a written permit-to-work system. Where the visiting employees are specialists, brought in to undertake specialist tasks, the host employer's instructions need to be concerned with those risks which are peculiar to the activity and premises. The visiting employee may also introduce risks to the permanent workforce (e.g. from equipment or substances they may bring with them). The responsible person for the employees from the outside undertaking has a general duty under section 3 of the Health and Safety at Work Act 1974 to inform the host employer of such risks and to co-operate and co-ordinate with the host employer to the extent needed to control those risks.

Article 20 FAQ

Q. Does this article relate only to employees?

A. No - it is a requirement imposed on responsible persons, in their various guises, to pass information to the employees and employers from outside undertakings. It does not make requirements on the responsible person in relation to his own employees. Essentially it is about providing information to (visitor) workers who are working 'in or on' the premises, and, where those workers are employed, then that employer needs information.

Article 21—Training

The Regulatory Reform (Fire Safety) Order 2005

Training

21. —(1) *The responsible person must ensure that his employees are provided with adequate safety training—*

(a) at the time when they are first employed; and

(b) on their being exposed to new or increased risks because of—

(i) their being transferred or given a change of responsibilities within the responsible person's undertaking;

(ii) the introduction of new work equipment into, or a change respecting work equipment already in use within, the responsible person's undertaking;

(iii) the introduction of new technology into the responsible person's undertaking;
or

(iv) the introduction of a new system of work into, or a change respecting a system of work already in use within, the responsible person's undertaking.

(2) The training referred to in paragraph (1) must—

(a) include suitable and sufficient instruction and training on the appropriate precautions and actions to be taken by the employee in order to safeguard himself and other relevant persons on the premises;

(b) be repeated periodically where appropriate;

(c) be adapted to take account of any new or changed risks to the safety of the employees concerned;

(d) be provided in a manner appropriate to the risk identified by the risk assessment;
and

(e) take place during working hours.

Article 21 Guidance Notes

Note: This article only applies to 'employer' responsible persons.

The responsible person must ensure that his employees are provided with adequate safety training. The enforcing authority needs to ascertain whether or not training is being carried out and if it meets the requirements of the Order.

This training must be suitable and sufficient and must be to a level which allows the employee to safeguard himself and other relevant persons on the premises.

The enforcing authority needs to ascertain evidence of the training but cannot require that records be kept. The keeping of records does however offer best practice because records may be audited and offer a straightforward way in which the responsible person can demonstrate compliance. In the absence of records the enforcing authority may be able to ascertain the adequacy of training by questioning a sample of the employees during audit / inspection. A recommendation may be made to maintain training records.

Fire safety training should take place during working hours. If it is necessary to arrange training outside an employee's normal hours, this should be treated as an extension of time at work. Employees must not pay for their training⁸⁵.

The fire risk assessment (and subsequent reviews of the assessment) will help determine the level of training and competence needed for each type of work. All employees, including senior management, should receive relevant training. This may need to include, among others, basic skills, specific on-the-job training and training in fire safety or emergency procedures. The issue of management training is of particular interest for positions of fire safety responsibility (i.e. those with control by virtue of article 5(3)). Training for managers is of particular importance for those occasions on which the usual manager is away for some reason, leaving a (normally) subordinate manager in control for the purposes of complying with the Order.

Training needs are likely to be greatest for new employees on recruitment. They should receive basic induction training on fire safety, fire and evacuation. Particular attention should be given to the needs of young workers. The fire risk assessment should identify further specific training needs. In some cases, training may be required even though an employee already holds formal qualifications (e.g. for an update on new technology). Training and competence will have to be reviewed if the work activity in which a person is involved or if the working environment changes. This may include a change of department or the introduction of new equipment, processes or tasks.

An employee's competence will decline if skills are not used regularly (e.g. in emergency procedures, operating a particular item of equipment or carrying out a task). Training therefore needs to be repeated periodically to ensure continued competence. Information from personal performance monitoring, fire safety checks, accident investigations and near-miss incidents can help to establish a suitable period for re-training.

Special attention should be given to article 21(2)(a) which demands actions from employees to safeguard themselves and other relevant persons. The actions taken by employees might be as simple as executing a safe and orderly evacuation, raising a general alarm to inform others or any other appropriate action that the responsible person considers necessary to safeguard others. This article links closely to article 23(c)(i), which requires employees to inform the employer (or other person) of situations that represent a serious and immediate danger to safety. The employer (or other person) might be informed of danger for example

⁸⁵ See article 40; responsible persons are prohibited from charging employees for anything they have to do or are required to do in respect of carrying out specific requirements of the relevant statutory provisions.

by raising a general alarm in case of fire.

Article 21 FAQ

Q. Could this article be prosecuted, considering that written records of training are not required?

A. Whilst there is no requirement to provide written records, there is a requirement to comply with the article and therefore a need (if required) to show compliance. Article 11 imposes a duty to record fire safety arrangements under prescribed conditions (see article 11). These arrangements relate to the preventive and protective measures. Preventive and protective measures are synonymous with general fire precautions, which include within their meaning '*measures relating to the instruction and training of employees*'. It is therefore a reasonable expectation that the arrangements for training, including effective: planning, organisation, control, monitoring, and review of training given will be recorded and available for audit by the enforcing authority.

Although written records / certificates indicating the results of individual training given and received cannot be expressly required under the Order, they will, if kept, be helpful to the responsible person when demonstrating compliance.

Article 21A—Provision of information to residents of domestic premises

The Regulatory Reform (Fire Safety) Order 2005

Provision of information to residents of domestic premises

21A. —(1) *This article applies in relation to a building containing two or more sets of domestic premises.*

(2) *The responsible person must give residents of the domestic premises comprehensible and relevant information about the relevant fire safety matters.*

(3) *The relevant fire safety matters are—*

(a) *the risks to residents of the domestic premises identified by the risk assessment;*

(b) *the preventive and protective measures;*

(c) *the name of the responsible person and an address in the united kingdom at which the responsible person, or someone acting on their behalf, will accept notices and other documents.*

(d) *the identity of any person appointed by the responsible person to assist them with making or reviewing an assessment under article 9;*

(e) *the identity of any persons nominated by the responsible person under article 13(3)(b);*

(f) *any risks of which the responsible person has been informed under article 22(1)(c);*

(g) *any other matters specified in regulations made by the relevant authority.*

(4) *The information is to be provided at such times, and in such form, as may be specified in regulations made by the relevant authority.*

(5) *The responsible person must keep records of the relevant fire safety matters.*

(6) *The “relevant authority”—*

(a) *in relation to premises in England, means the Secretary of State.*

(b) *in relation to premises in Wales, means the Welsh Ministers.*

(7) *Regulations made under this article are to be made by statutory instrument.*

(8) *A statutory instrument containing regulations made by the Secretary of State under this article is subject to annulment in pursuance of a resolution of either House of Parliament.*

(9) A statutory instrument containing regulations made by the Welsh Ministers under this article is subject to annulment in pursuance of a resolution of Senedd Cymru.

Article 21A Guidance Notes

Awaiting input

Article 21A FAQ

No FAQ made.

Article 22—Co-operation and co-ordination **between responsible persons**

The Regulatory Reform (Fire Safety) Order 2005

Co-operation and co-ordination between responsible persons

22. —(A1) A person who is a responsible person in relation to any premises must take such steps as are reasonably practicable to ascertain whether any other responsible person shares, or has duties in respect of, the premises.

(1) Where two or more responsible persons share, or have duties in respect of, premises (whether on a temporary or a permanent basis) each such person must—

(za) inform the other responsible person concerned of that person's name and an address in the United Kingdom at which that person, or someone acting on their behalf, will accept notices and other documents;

(zb) inform the other responsible persons concerned of the part of the premises for which that person considers themselves to be a responsible person, and keep a record of that information;

(a) co-operate with the other responsible person concerned so far as is necessary to enable them to comply with the requirements and prohibitions imposed on them by or under this Order;

(b) (taking into account the nature of his activities) take all reasonable steps to co-ordinate the measures he takes to comply with the requirements and prohibitions imposed on him by or under this Order with the measures the other responsible persons are taking to comply with the requirements and prohibitions imposed on them by or under this Order; and

(c) take all reasonable steps to inform the other responsible persons concerned of the risks to relevant persons arising out of or in connection with the conduct by him of his undertaking.

(2) Where two or more responsible persons share premises (whether on a temporary or a permanent basis) where an explosive atmosphere may occur, the responsible person who has overall responsibility for the premises must co-ordinate the implementation of all the measures required by this Part to be taken to protect relevant persons from any risk from the explosive atmosphere.

Article 22 Guidance Notes

The intention of this article is to require responsible persons and duty-holders who share premises to take all reasonable steps to co-ordinate the measures they take to provide general fire precautions in respect of relevant persons.

Where two or more responsible persons share or have duties in respect of premises (whether on a temporary or a permanent basis) each such person must co-operate with the other. They must also take all reasonable steps to co-ordinate their respective safety measures and provide each other with information relevant to the risks from each other's undertaking and the provision of general fire precautions.

Responsible persons in premises with multiple occupiers must comply with article 22 by co-ordinating their risk assessments and co-operating with each other when implementing preventive and protective measures.

The need to co-operate with other occupiers is part of the significant findings under the risk assessment.

Enforcing authorities should ascertain what efforts are made to co-ordinate emergency plans, safety drills or testing and maintenance.

To meet the requirements of this article, it is necessary to account for the whole premises, e.g. responsible persons should come together when carrying out a fire risk assessment under article 9 or establishing procedures to follow in the event of serious and imminent danger under article 15 etc. When any place is occupied by more than one responsible person, this will require some degree of co-ordination and co-operation. All responsible persons involved should satisfy themselves that the arrangements adopted are adequate to provide safety for the relevant persons for which they are responsible. Specific co-ordination arrangements may be required by other regulations.

By way of example consider the following situation; a multi-occupied building designed for phased evacuation. The various occupant responsible persons need to understand the strategy in place for the building. An occupant responsible person that intends to evacuate when the pre-alarm sounds (rather than on the full alarm evacuation signal), will put the design capacity of the staircases at risk. This will risk the lives of relevant persons on floors requiring evacuation, because they may not be able to evacuate as quickly and as safely as possible. It is therefore imperative that occupant responsible persons co-operate and co-ordinate their actions in case of fire.

Where one particular responsible person controls the premises, other responsible persons and duty-holders should assist in assessing the shared risks and in co-ordinating necessary preventive and protective measures e.g. by not frustrating protective measures in the shared areas of the building. In many situations providing information may be sufficient. A controlling responsible person who has established site-wide arrangements will have to inform new persons of those arrangements so that they can integrate themselves into the established procedures. Take for example, a large commercial building with external staff providing catering and cleaning services to a main employer. The host employer's premises constitute the normal workplace for the external staff (who have a different employer). The responsible person for those external staff would be expected to co-operate and co-ordinate the measures put in place for those staff with the measures in place for the premises by the host responsible person.

Where the activities of different responsible persons interact, for example where they share premises or workplaces, they may need to co-operate with each other to make sure their respective obligations are met. For example, a small shared building with a single staircase. Each responsible person must understand the other's reliance on the staircase enclosure for

their means of escape and as such must co-operate and co-ordinate with one-another to ensure the staircase remains free of combustible materials (deliveries, waste, storage etc.) and that the integrity of the staircase is maintained by ensuring fire doors remain closed. Where one responsible person intends to use the building in a different way for any reason, then he must co-operate and co-ordinate to ensure they provide safe premises for relevant persons. This article does not extend to the relationship between a host employer and a contractor, which is covered in article 20.

The duties to co-operate and co-ordinate measures relate to all duties under the Order. Therefore, they concern all people who may be at risk, both on and off site, and not just where responsible persons and self-employed people permanently share a workplace.

Article 22 FAQ

Q. 22(2) Why are explosives singled out and how can you find out who has overall responsibility or is this for HSE?

A. It is not explosives. It is explosive atmospheres e.g. where the levels of flammable gases, dusts etc. may be sufficient to cause an explosion if an ignition source is introduced. Enforcement of the co-operation requirement can be done using the Order.

Q. When enforcing this article, is it necessary to enforce on all responsible persons involved?

A. It will depend on the circumstances of the case. If one responsible person is making efforts to co-operate and co-ordinate, but another responsible person will not respond, it may be appropriate to issue enforcement on the second responsible person only.

Q. What requirements are imposed by the article when residents and another share duties in buildings e.g. in high rise residential buildings?

A. For cases in which there is an overarching responsible person and a high number of other duty holders under article 5 (e.g. by having an obligation in relation to the safety of premises by virtue of a contract or tenancy agreement) the duty to cooperate and coordinate continues to apply. The guidance notes given above would remain extant. For practical purposes, the responsible person would be expected to share the findings of the fire risk assessment i.e. what has been done to keep people safe in case of fire and what more (if anything) needs to be done, together with any additional control measures that might be in place. The residents would be expected to align with the assessment and to maintain e.g. responsibility for the fire safety of their own front door. By sharing information in this way (cooperating and coordinating) the safety systems in premises may be better understood and better 'cared for' by all duty holders.

Q. Why has article 22(A1) been created?

A. The article does not assume that respective responsible persons are known to each other and places an active duty, rather than the previous or implied duty, so that the general duty to cooperate and coordinate can be met.

Q. How does article 22(1)(za) relate to the GDPR?

A. The duty imposed is, in essence, to provide contact details at which notices and other documents can be received. In all likelihood this could be achieved by providing administrative contact details, as long as there is assurance that the message will reach the intended recipient.

Article 22A—Provision of information to new responsible person

The Regulatory Reform (Fire Safety) Order 2005

Provision of information to new responsible person

22A. —(1) Paragraph (2) applies where a person (the “outgoing person”) ceases to be a responsible person for premises and any other person (the “new responsible person”) becomes a responsible person for the premises in place of the outgoing person.

(2) The outgoing responsible person must give the new responsible person any relevant fire safety information held by the outgoing person.

(3) “Relevant fire safety information” means —

- (a) records kept under article 9(6) of assessments and reviews under article 9;
- (b) the identity of any person appointed by the responsible person to assist them with making or reviewing an assessment under article 9;
- (c) the name of any other person who is a responsible person in relation to the premises and an address in the United Kingdom at which that person, or someone acting on their behalf, will accept notices and other documents (where known);
- (d) where the premises consist of or include a higher-risk building, the identity of any other person who is an accountable person in relation to the premises (where known);
- (e) any information given under [regulation 38](#) of the Building Regulations 2010 (SI 2010/2214)(fire safety information);
- (ea) any information given under [regulation 38](#) or [39](#) of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (fire safety information);⁸⁶
- (f) any other matters specified in regulations made by the relevant authority.

(4) The information is to be provided at such times, and in such form, as may be specified in regulations made by the relevant authority.

(5) A responsible person must keep records of relevant fire safety information.

(6) In this article—

[“accountable person”](#) has the meaning given by section 72 of the Building Safety Act 2022;

⁸⁶ Added as a consequential amendment to the Order by The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023, UK SI 2023 No. 909, Regulation 63(in force 1 October 2023)

“higher-risk building” has the meaning given by section 65 of that Act;

“relevant authority”—

(a) in relation to premises in England, means the Secretary of State.

(b) in relation to premises in Wales, means the Welsh Ministers.

(7) Regulations made under this article are to be made by statutory instrument.

(8) A statutory instrument containing regulations made by the Secretary of State under this article is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) A statutory instrument containing regulations made by the Welsh Ministers under this article is subject to annulment in pursuance of a resolution of Senedd Cymru.

Article 22A Guidance Notes

Awaiting input

Article 22A FAQ

No FAQ yet

Article 22B—Co-operation with accountable persons

The Regulatory Reform (Fire Safety) Order 2005

Co-operation with accountable persons

22B. —(1) *This article applies in relation to premises which consist of or include a residential unit in a higher-risk building*

(2) *The responsible person (“P”) must take such steps as are reasonably practicable to ascertain whether there are one or more other persons who are accountable persons in relation to the premises.*

(3) *If there are, P must co-operate with each accountable person for the purpose of the accountable person carrying out their duties under the Building Safety Act 2022.*

(4) *In this article—*

“[accountable person](#)” has the meaning given by section 72 of the Building Safety Act 2022

“[higher-risk building](#)” has the meaning given by section 65 of that Act;

“residential unit” has the meaning given by section 115⁸⁷ of that Act.

Article 22B Guidance Notes

Awaiting input

Article 22B FAQ

No FAQ yet

⁸⁷ “residential unit” means—

- (a) a dwelling, or
- (b) any other unit of living accommodation”;

Article 23—General duties of employees at work

The Regulatory Reform (Fire Safety) Order 2005

General duties of employees at work

23. —(1) Every employee must, while at work—

(a) take reasonable care for the safety of himself and of other relevant persons who may be affected by his acts or omissions at work;

(b) as regards any duty or requirement imposed on his employer by or under any provision of this Order, co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with; and

(c) inform his employer or any other employee with specific responsibility for the safety of his fellow employees—

(i) of any work situation which a person with the first-mentioned employee's training and instruction would reasonably consider represented a serious and immediate danger to safety; and

(ii) of any matter which a person with the first-mentioned employee's training and instruction would reasonably consider represented a shortcoming in the employer's protection arrangements for safety,

in so far as that situation or matter either affects the safety of that first-mentioned employee or arises out of or in connection with his own activities at work, and has not previously been reported to his employer or to any other employee of that employer in accordance with this sub-paragraph.

Article 23 Guidance Notes

Article 23 in conjunction with articles 19 and 21 creates a means by which the responsible person should be made aware of any failures or shortcomings in his preventive and protective measures. Articles 19 and 21 respectively deal with the provision of information and training to employees. Assuming that these articles have been adequately satisfied then article 23 assists the employer to identify and subsequently deal with failures.

In particular having been informed and trained with regard to preventive and protective measures (at article 19(2)(b)) the employee is held by a duty at article 23(c)(ii) to inform the employer (or his representative) of any shortcomings in the employer's protection arrangements for safety. By implication, where there is a requirement to report on any given situation it is reasonable to expect a mechanism whereby the employee can communicate the shortcoming to the employer. In a practical sense this is simply a means for employees to report defects.

This consideration should assist the employer to comply with his duties by keeping him up-to-date with any identified shortcomings in his protection arrangements. Where inspecting officers identify numerous failures in protection arrangements for safety, it will be worthwhile to pursue a line of questioning relating to this article and the ability of employees to identify problems. Such a line of questioning might lead to a discovery of further failures relating to the provision of information and training of employees. Where employees are informed and trained as required and appropriate information is being passed to the employer, it might be worth enquiring as to how the observed failures are corrected and how a determination is made as to the priority given to each identified failure.

Where such reporting mechanisms can be established, the employer is more likely to be able to demonstrate that he is already aware of any failures and that those failures are being dealt with through their usual routine maintenance systems. In cases that such systems can be adequately demonstrated, the enforcing authority can be reasonably satisfied that the employer is relatively self-compliant with the requirements imposed on him.

Additionally, article 23 places duties upon employees to take reasonable care for their own safety and the safety of others and also to co-operate with their employer to enable his compliance with the duties imposed on him.

It is worthy of note that it is an offence for an employee to fail to comply with article 23 where that failure places one or more relevant persons at risk of death or serious injury in case of fire. For such a prosecution to be realised the employer would have to prove that he had fulfilled his duties to enable the employee to participate as required.⁸⁸ However where the actions of an employee give rise to the risk of death or serious injury to relevant persons through reckless behaviour, the preceding comment (regarding proof of fulfilling the employer's duties) need not apply.

Article 23 FAQ

Q. Can employees be held to account for failures under article 23 of the Order?

A. Employees can only be held to account by way of legal proceedings for an offence under article 32(2)(a). Employees avoid being issued with an Enforcement Notice because the Notice must be served on a responsible person (or article 5(3) duty holder). The duties associated with these persons specifically exclude matters relating to article 23. Instead, poor employee behaviour must be addressed through other articles.

Q. Suppose that a fire occurs and that an employee fails to raise the alarm for the benefit of other relevant persons. The fire is subsequently mitigated by the employee but the raising of a general alarm was given no consideration. What can be done to help ensure that the employee raises the alarm in the event of any future fire?

⁸⁸ SI 2005 No. 1541 article 32(2)(a)

- A. There is little doubt that the employee has failed under the Order, but the failure has not resulted in death or serious injury (and as such the risk of that outcome must be zero for this case). Although the employee has failed to comply with the Order, he cannot be directly approached because of the lack of a tangible offence. The question boils down to how employees are caused to raise a general alarm in case of fire.

Article 23 requires the employee (to paraphrase) to inform his employer of a work situation which the employee would reasonably consider represented a serious and immediate danger to safety. Raising the fire alarm to alert others might satisfy this requirement under the conditions outlined above. However, the employee cannot be directly tackled under article 23 without an offence having been committed.

It would be necessary for the employer to be served with a notice requiring him to address the issue/. The issue may be generally addressed under article 8(1)(a) (to satisfy general fire precaution 4(1)(f)(i) and more specifically addressed under article 21(2)(a), which requires training to be suitable and sufficient, relating to actions to be taken by the employee, to safeguard himself and other relevant persons. The raising of a fire alarm would be an action that could safeguard relevant persons.

Article 24—Power to make regulations about fire precautions

The Regulatory Reform (Fire Safety) Order 2005

Power to make regulations about fire precautions

24. —(1) *The Secretary of State may by regulations make provision as to the precautions which are to be taken or observed in relation to the risk to relevant persons as regards premises in relation to which this Order applies.*

(2) *Without prejudice to the generality of paragraph (1), regulations made by the Secretary of State may impose requirements—*

(a) as to the provision, maintenance and keeping free from obstruction of any means of escape in case of fire;

(b) as to the provision and maintenance of means for securing that any means of escape can be safely and effectively used at all material times;

(c) as to the provision and maintenance of means for fighting fire and means for giving warning in case of fire;

(d) as to the internal construction of the premises and the materials used in that construction;

(e) for prohibiting altogether the presence or use in the premises of furniture or equipment of any specified description, or prohibiting its presence or use unless specified standards or conditions are complied with;

(f) for securing that persons employed to work in the premises receive appropriate instruction or training in what to do in case of fire;

(g) for securing that, in specified circumstances, specified numbers of attendants are stationed in specified parts of the premises; and

(h) as to the keeping of records of instruction or training given, or other things done, in pursuance of the regulations.

(3) *Regulations under this article—*

(a) may impose requirements on persons other than the responsible person; and

(b) may, as regards any of their provisions, make provision as to the person or persons who is or are to be responsible for any contravention of that provision.

(4) *The Secretary of State must, before making any regulations under this article, consult with such persons or bodies of persons as appear to him to be appropriate.*

(5) The power of the Secretary of State to make regulations under this article —

(a) is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament;

(b) includes power to make different provision in relation to different circumstances; and

(c) includes power to grant or provide for the granting of exemptions from any of the provisions of the regulations, either unconditionally or subject to conditions.

Article 24 Guidance Notes

This article empowers the Secretary of State to make regulations about fire precautions. It re-enacts (with some modifications) Section 12 of the Fire Precautions Act 1971, and gives the Secretary of State power to impose requirements including the power to impose requirements on persons other than the responsible person.

The Secretary of State is under a duty to consult with such persons as appear to be appropriate before making any regulations under this article. Regulations are made as secondary legislation, a Statutory Instrument, which is subject to being cancelled if (on its progression through the House of Commons and then the House of Lords), it is not positively passed (i.e. voted 'in') by both Houses of Parliament.

The following have been introduced by use of article 24:

- The Fire Precautions (Sub-surface Railway Stations) Regulations 2009⁸⁹; and
- The Fire Safety (Employees' Capabilities) (England) Regulations 2010⁹⁰

The Fire Precautions (Sub-surface Railway Stations) Regulations 2009 have been put in place to ensure that the reform of fire safety law has not increased the risks in sub surface railway stations.

The principal regulatory requirements that are retained in the new Regulations relate to:

- Automatic suppression systems (exemptible)
- Automatic detection and fire alarms (exemptible)
- A minimum of two staff on duty (exemptible)
- Control of combustible materials and building works
- Additional training and instruction for staff
- Premises Information Boxes
- Fire and rescue authorities will continue to have powers to grant exemptions on a case by case basis from some of the requirements.
- The new Regulations are prescriptive and set out measures that must be taken or put in place to ensure compliance.

⁸⁹ SI 2009 No. 782

⁹⁰ SI 2010 No. 471

- They do not replace anything prescribed under the Fire Safety Order; rather they serve as an addition to those legal obligations.
- The Regulations only apply to sub surface railway stations.

The Fire Safety (Employees' Capabilities) (England) Regulations 2010 ensure that every employer must, in entrusting tasks to employees, take into account their capabilities as regards health and safety, so far as those capabilities relate to fire.

Article 24 FAQ

Q. Is a failure to comply with requirements made under article 24 a failure under article 24 or some other part of the Order?

A. It is a requirement under the Order for all duty holders to comply with articles 8-22 and regulations made under article 24. As such a failure to comply with regulations made under article 24 are a failure in their own right and should be dealt with as such.

PART 3 ENFORCEMENT

Article 25—Enforcing authorities

The Regulatory Reform (Fire Safety) Order 2005

Enforcing authorities

25.—⁽¹⁾⁹¹ For the purposes of this Order, "enforcing authority" means—

(a) the fire and rescue authority for the area in which premises are, or are to be, situated, in any case not falling within any of sub-paragraphs (b) to (e);

(b) the Health and Safety Executive in relation to—

~~(i) any premises for which a licence is required in accordance with section 1 of the Nuclear Installations Act 1965 or for which a permit is required in accordance with section 2 of that Act;~~

~~(ii) any premises which would, except for the fact that it is used by, or on behalf of, the Crown, be required to have a licence or permit in accordance with the provisions referred to in sub-paragraph (i);~~

(iii) a ship, including a ship belonging to Her Majesty which forms part of Her Majesty's Navy, which is in the course of construction, reconstruction or conversion or repair by persons who include persons other than the master and crew of the ship;

(iv) any workplace which is, or is on, a construction site, other than one in relation to which the Office for Nuclear Regulation is responsible for health and safety enforcement.

(bb)⁸⁷ the Office for Nuclear Regulation in relation to—

(i) any premises for which a licence is required by virtue of section 1 of the Nuclear Installations Act 1965 or for which a permit is required by section 2 of that Act;

(ii) any premises for which such a licence or permit would be required but for the fact that the premises are used by, or on behalf of, the Crown;

(iii) any workplace which is, or is on, a construction site in relation to which the Office for Nuclear Regulation is responsible for health and safety enforcement;

(c) the fire service maintained by the Secretary of State for Defence in relation to—

(i) premises, other than premises falling within paragraph (b)(iii), occupied solely for the purposes of the armed forces of the Crown;

⁹¹ Amendment made by paragraphs 87 and 88 of Part 5 of Schedule 12 to the Energy Act 2013 (c.32).

(ii) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964;

(iii) premises, other than premises falling within paragraph (b)(iii), which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;

(d) the relevant local authority in relation to premises which consist of—

(i) a sports ground designated as requiring a safety certificate under section 1 of the Safety of Sports Grounds Act 1975 (safety certificates for large sports stadia);

(ii) a regulated stand within the meaning of section 26(5) of the Fire Safety and Safety of Places of Sport Act 1987 (safety certificates for stands at sports grounds);

(e) a fire inspector, or any person authorised by the Secretary of State to act for the purposes of this Order, in relation to—

(i) premises owned or occupied by the Crown, other than premises falling within paragraph (bb)(ii) and (c);

(ii) premises in relation to which the United Kingdom Atomic Energy Authority is the responsible person, other than premises falling within paragraph (bb)(ii).

(iii)⁹² a prison within the meaning of the Prison Act 1952⁹³;

(iv) custodial premises provided under section 43 of the Prison Act 1952 (places for the detention of young offenders etc.)⁹⁴;

(v) premises which are for the time being approved under section 13(1) of the Offender Management Act 2007 (approved premises)⁹⁵;

(vi) accommodation provided by a court and used for the detention of persons who have been sentenced to imprisonment or detention or remanded in custody;

⁹² Article 25(1)(e)(iii) to 25(1)(e)(ix) inserted by the Regulatory Reform (Fire Safety) (Custodial Premises) Subordinate Provisions Order 2018

⁹³ [1952 c. 52](#). Section 33 was amended by section 100 of the Criminal Justice and Public Order Act [1994 \(c. 33\)](#) and by article 3 of and Schedule 1 to the Prison Commissioners Dissolution Order 1963 ([S.I. 1963/597](#)).

⁹⁴ Section 43 was substituted by section 38(1) of the Criminal Justice and Courts Act [2015 \(c. 2\)](#) and was amended by section 84(3) of the Deregulation Act [2015 \(c. 20\)](#).

⁹⁵ [2007 c. 21](#).

(vii) a removal centre, pre-departure accommodation or short-term holding facility within the meaning of section 147 of the Immigration and Asylum Act 1999 (interpretation of Part VIII)⁹⁶;

(viii) a customs office designated under section 35(1) of the Police and Criminal Evidence Act 1984⁹⁷ as applied and modified by articles 12 (application of the Police and Criminal Evidence Act 1984) and 22 (modification of section 35 of the Act (designated police stations)) of the Police and Criminal Evidence Act (Application to immigration officers and designated customs officials in England and Wales) Order 2013⁹⁸;

(ix) an office of Revenue and Customs designated under section 35(1) of the Police and Criminal Evidence Act 1984 as applied and modified by articles 3 (application) and 10 (modification of section 35 of the Act (designated police stations)) of the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2015⁹⁹.

(2)⁸⁷ For the purpose of paragraph (1)--

(a) "construction site" means a construction site, as defined in regulation 2(1) of the Construction (Design and Management) Regulations 2007, to which those regulations apply, other than one to which regulation 46(1) of those regulations applies;

(b) the Office for Nuclear Regulation is responsible for health and safety enforcement in relation to a construction site if, by virtue of regulations made under section 18(2) of the Health and Safety at Work etc. Act 1974 (enforcement), it is responsible for the enforcement of any of the relevant statutory provisions (within the meaning of Part 1 of that Act) in relation to the site.

Article 25 Guidance Notes

No further interpretation or guidance can be provided at this time to supplement that given in Guidance Note 1¹⁰⁰.

⁹⁶ [1999 c. 33](#). Section 147 was amended by section 66 of the Nationality, Immigration and Asylum Act [2002 \(c. 41\)](#), section 25 of the Borders, Citizenship and Immigration Act [2009 \(c. 11\)](#) and by section 6(2)(b) and (c) of the Immigration Act [2014 \(c. 22\)](#). There are other amendments which are not relevant to this Order.

⁹⁷ [1984 c. 60](#).

⁹⁸ [S.I. 2013/1542](#).

⁹⁹ [S.I. 2015/1783](#).

¹⁰⁰ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

Article 25 FAQ

Q. Who enforces the Order at a designated Sports Ground when there is no event happening?

A. If the Sports Ground is designated as requiring a certificate, the relevant local authority is the enforcing authority. The terms of the license are of no consequence, only that the ground is designated as requiring the certificate. This prevents the ground switching enforcing authorities at different times, such as when the certificate is not in force.

Q. Does the Order take precedence over Construction (Design and Management) Regulations 2015 on an occupied construction site?

A. The CDM regulations 2015 contains no offences but those regulations state what needs to be done to satisfy the regulations for fire safety on a construction site¹⁰¹ i.e. comply with regulations 30, 31 and 32 ('emergency procedures'; 'emergency routes and exits'; and 'fire detection and fire-fighting' respectively) insofar as they relate to fire. The enforcement of those regulations (see regulation 36 of those regulations) is the enforcing authority under article 25 of the Order. With respect to that enforcement, regulations 30 and 31 are enforced so far as they relate to fire and regulation 32 is enforced in respect of a construction site which is contained with or forms part of premises occupied by persons other than those carrying out the construction work, or any activity related to that work. Useful information relating to the standards of general fire precautions applicable to construction sites can be found in HSG 168, Fire Safety In Construction Sites¹⁰².

Q. Who enforces the Order in occupied construction sites?

A. The Health and Safety Executive unless the Office for Nuclear Regulation is responsible for health and safety enforcement.

Q. Why did the Energy Act 2013 make amendments to article 25 of the Order?

A. The Energy Act 2013 created the Office for Nuclear Regulation (ONR) and there was a desire to clearly define the functions of the ONR from those of other bodies. In the explanatory notes to the Energy Bill, as introduced in the House of Commons on 29th November 2012 [Bill100]¹⁰³, the purpose of Part 5 to that Bill was commented upon at Clause 94, paragraph 407.

¹⁰¹ See SI 2015 No. 51, Regulations 30,31, 32

¹⁰² HSE Books, *HSG 168 Fire Safety In Construction*, HSE, 2010

¹⁰³ United Kingdom, *Energy Bill Explanatory notes*, [online], 2012, London—The Stationary Office, available from <<https://publications.parliament.uk/pa/bills/cbill/2012-2013/0100/en/13100en.pdf>> accessed 22 July 2022

“Part 5 of the Schedule amends primary legislation to ensure that ONR’s functions are clearly defined from those of the Secretary of State or the HSE ...”

Article 26—Enforcement of Order

The Regulatory Reform (Fire Safety) Order 2005

Enforcement of Order

26. —(1) Every enforcing authority must enforce the provisions of this Order and any regulations made under it in relation to premises for which it is the enforcing authority and for that purpose, except where a fire inspector or other person authorised by the Secretary of State is the enforcing authority, may appoint inspectors.

(2) In performing the duty imposed by paragraph (1), the enforcing authority must have regard to such guidance as the Secretary of State may give it.

(3) A fire and rescue authority has power to arrange with the Health and Safety Commission, Office for Nuclear Regulation⁸⁷ or the Office of Rail Regulation for such of the authority's functions under this Order as may be specified in the arrangements to be performed on its behalf by the Health and Safety Executive, Office for Nuclear Regulation⁸⁷ or the Office of Rail Regulation, as the case may be, (with or without payment) in relation to any particular workplace.

Article 26 Guidance Notes

This article directs enforcing authorities to enforce the requirements of the Order, which includes not only those articles with which the responsible person (and duty holders) must comply (principally articles 8-22) but also the other provisions of the Order; incorporating all articles. For the purpose of affecting the enforcement of the Order, enforcing authorities are given the liberty to appoint inspectors. Any enforcement action is taken at the discretion of the enforcing authority.

Any inspectors appointed by enforcing authorities should be provided with written authority, which should be provided in a form that the inspector can produce to demonstrate the evidence of his authority to exercise the powers conferred on him by article 27.

In bringing the requirements of the Order into effect, enforcing authorities must have regard to such guidance as the Secretary of State may issue. An example of this guidance would be Guidance Note No.1¹⁰⁴.

Further applicable guidance includes the Regulator's Code¹⁰⁵ which sets out the principles of better regulation and economic growth. Enforcing authorities and appointed inspectors are expected to be familiar and compliant with this guidance. Fire and Rescue Authorities are

¹⁰⁴ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, 2007

¹⁰⁵ Better Regulation Delivery Office. *Regulators' Code – Statutory Code of Practice for Regulators*, [online], April 2014, London: Department for Business Innovation and Skills. Available from: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf> [Accessed 24 November 2014]

bound by the Regulators Code, which is a statutory Code of Practice for regulators. The Regulators' Code also introduces a duty to contribute to economic growth and to improve and drive consistency in the way in which they regulate fire safety in premises.

The Code makes six broad requirements of regulators:

1. To carry out their activities in a way that supports those they regulate to comply and grow;
2. To provide simple and straightforward ways to engage with those they regulate and to hear their views;
3. To base their regulatory activity on risk;
4. To share information about compliance and risk;
5. To ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and
6. To ensure their approach to regulatory activity is transparent.

For further information regarding the Regulator's Code, readers are encouraged to read the source document.

Article 26 FAQ

Q. 26(2) to what guidance does this article refer?

A. This would be formal guidance first issued by the Department for Communities and Local Government (DCLG). It may form part of the National Framework, Integrated Risk Management Planning guidance or simply a circular or letter – though in the case of the latter two, Home Office should identify in it that it is article 26 guidance. Basically, Guidance issued under article 26 is whatever guidance Home Office say is 'article 26' guidance.

Q. 26(3) Why the Office of Rail Regulation when they are not an enforcer?

A. The Office of Rail Regulation (ORR) have taken over the Health and Safety Executives roles and functions in respect of railways. The ability to authorise the HSE or the ORR to enforce is the same as can be done for local authorities using section 101 of the Local Government Act 1972.

Q. 26(3) Can we use this to make arrangements with local authorities?

A. No. Arrangements with local authorities would be made using section 101 of the Local Government Act 1972.

Article 27—Powers of inspectors

The Regulatory Reform (Fire Safety) Order 2005

Powers of inspectors

27. —(1) *Subject to the provisions of this article, an inspector may do anything necessary for the purpose of carrying out this Order and any regulations made under it into effect and in particular, so far as may be necessary for that purpose, shall have power to do at any reasonable time the following—*

(a) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned above and to inspect the whole or part of the premises and anything in them, where such entry and inspection may be effected without the use of force;

(b) to make such inquiry as may be necessary for any of the following purposes—

(i) to ascertain, as regards any premises, whether the provisions of this Order or any regulations made under it apply or have been complied with; and

(ii) to identify the responsible person in relation to the premises;

(c) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records (including plans)—

(i) which are required to be kept by virtue of any provision of this Order or regulations made under it; or

(ii) which it is necessary for him to see for the purposes of an examination or inspection under this article,

and to inspect and take copies of, or of any entry in, the records;

(d) to require any person having responsibilities in relation to any premises (whether or not the responsible person) to give him such facilities and assistance with respect to any matters or things to which the responsibilities of that person extend as are necessary for the purpose of enabling the inspector to exercise any of the powers conferred on him by this article;

(e) to take samples of any articles or substances found in any premises which he has power to enter for the purpose of ascertaining their fire resistance or flammability; and

(f) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to the safety of relevant persons, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is, in the circumstances, necessary).

(2) An inspector must, if so required when visiting any premises in the exercise of powers conferred by this article, produce to the occupier of the premises evidence of his authority.

(3) Where an inspector proposes to exercise the power conferred by paragraph (1)(f) he must, if requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(4) Before exercising the power conferred by paragraph (1)(f) an inspector must consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

Article 27 Guidance Notes

The powers of inspectors set out in article 27 are those necessary to ensure that the Order can be effectively enforced. Nothing in article 27 provides for a power of forcible entry, search or seizure. Article 27 can be used to request information from any person that will assist an inspector to exercise his powers, i.e. those powers listed at 27(1)(a)-(f).

Records and plans may be obtained for the purpose of determining the status of contracts or tenancies so that Notices or legal action is directed at the correct duty holder. Inspectors can also require samples of things which appear to him to have created (or appears likely to present) a danger to relevant persons or to ascertain fire resistance or flammability. Any samples so required must be given freely by the responsible person (or duty holder) as the power bestowed on inspectors does not amount to a power of seizure.

“... an investigating officer might be refused permission to remove an item or sample if there are reasonable grounds for doing so. It should, where necessary, be for the courts to determine the reasonableness of any refusal.”¹⁰⁶

The powers of inspectors under this Order and any regulations made under it can only be exercised at a reasonable time. What constitutes a reasonable time will depend upon the circumstances of the case, the use to which the premises are put and the professional judgement of the inspecting officer. There may be a difference for these purposes between premises which provide sleeping accommodation and those that do not. There may also be a difference between routine inspections and those carried out where dangerous conditions are suspected (see article 31).

For example, this document considers that it is reasonable to inspect premises used for sleeping accommodation, in the case of a complaint, at any time due to the potential risk to relevant persons. This could be late evening or early morning. In the case of a bar, which is open for trading until midnight, it would be reasonable to inspect at any time when the premises are occupied by the public, but it would not be reasonable to inspect at 3am when the premises is closed.

Enforcing authorities should note that by virtue of article 31(10) powers of inspectors are extended to domestic premises in HMOs where there are reasonable grounds for the inspector

¹⁰⁶ GREAT BRITAIN. The Office of the Deputy Prime Minister, *A consultation document on the reform of fire safety legislation, Amending various Acts and statutory instruments to Simplify, rationalise and consolidate the law with respect to fire safety in buildings in use A Consultation Paper issued by The Office of the Deputy Prime Minister, July 2002*, London, The Office of the Deputy Prime Minister 2002, p 55, Para 6.7

to believe that conditions exist that may require action under article 31 (prohibition notices).

For authorities enforcing the Order in Crown owned or occupied premises, it should be noted that by virtue of article 49(2) powers of inspectors under this article apply only in respect of premises owned by the Crown but not occupied by it. For this purpose, visiting forces are treated as Crown premises.

Health and Safety Executive inspectors should note the differences between the powers that they have under Section 20 of the Health and Safety at Work etc Act 1974 and the powers that are available to them under this Order.

Article 27 FAQ

Q. 27(c) What records is this referring to?

A. There are two types (a) any records the Order requires to be kept e.g. the significant findings of the risk assessment and any persons especially at risk, where five or more people are employed etc.; and (b) any other records that may reasonably be regarded as having some relevance to the fire safety arrangements for the premises.

Q. What if a request for information is not forthcoming from the responsible person?

A. If a responsible person does not respond to requests for information under article 27 then this may constitute an offence under article 32. Following successful prosecution¹⁰⁷ courts have stated that the requirement to provide information is the starting point of an effective risk management regime, and if this is not taken seriously doubt would be raised as to the overall management attitude towards general fire precautions.

Q. In what format should information under article 27(b)(ii) be provided?

A. The Order is silent on this issue however it may be interpreted that a verbal response may be acceptable. Where such verbal communications are received to provide this information, it is considered best practice for the enforcing officer to make a note of the event in a contemporaneous notebook.

¹⁰⁷ HFRS v Solitaire Property Management

Article 28—Exercise on behalf of fire inspectors of their powers by officers of fire brigades

The Regulatory Reform (Fire Safety) Order 2005

Exercise on behalf of fire inspectors etc. of their powers by officers of fire brigades

28. —(1) The powers conferred by article 27 on a fire inspector, or any other person authorised by the Secretary of State under article 25(e), are also exercisable by an employee of the fire and rescue authority when authorised in writing by such an inspector for the purpose of reporting to him on any matter falling within his functions under this Order; and articles 27(2) and (3) and 32(2)(d) to (f), with the necessary modifications, apply accordingly.

(2) A fire inspector, or other person authorised by the Secretary of State, must not authorise an employee of a fire and rescue authority under this article except with the consent of the fire and rescue authority.

Article 28 Guidance Notes

The Chief Fire and Rescue Adviser is responsible for the management of the enforcement of the Order in Crown premises in England. This is carried out by Crown Premises Fire Inspectors who work as part of the Office of the Chief Fire and Rescue Adviser. This article allows Crown inspectors, and inspectors appointed by the Secretary of State to use the services of the local Fire and Rescue Service to carry out fire safety audits within Crown property. This arrangement must be agreed by the local Fire and Rescue Authority prior to work taking place. This power of inspection, on behalf of Crown Inspectors, must be given in writing and does not empower the local fire officer to take enforcement action due to the requirements of article 49 (Application to the Crown and to the Houses of Parliament). Following the audit of Crown premises, the findings should be reported to the Crown Fire Inspector or other person authorised by the Secretary of State.

Further background information on Crown Premises

The Order binds the Crown, except for the provisions relating to enforcement and prosecution. To safeguard Crown employees from a Crown failure to comply with fire safety legislation, all Crown departments and agencies are required to provide compliance with the provisions of the Order. Where the Crown is subject to any of the general fire safety duties contained in the Order, Crown Inspectors, as enforcing authorities appointed by the Secretary of State under article 25(e)(i), will follow a similar process to that used by Fire and Rescue Authorities for non-crown premises. This means that, where appropriate, a notification will be served on the employer and any other person who may be deemed to be responsible, in the same way as if the legal enforcement provisions apply where a failure to comply with the requirements is found. The notice is intended to inform the responsible person that, in the opinion of the Crown Fire Inspector, they have failed to comply with the requirements imposed on them by the Order. The notice cannot be legally enforced.

Article 28 FAQ

Q. Why can't enforcement action under the Order be taken within Crown premises?

A. Article 49 should be referred to for full detail but in summary it restricts the application of some of the articles within Crown premises in that there is no ability to issue enforcement or alterations notices. Part 4 of the Order (Offences and Appeals) does not apply and in the case of Prohibition, this only applies if the Crown owns premises but does not occupy it.

Article 29—Alterations notices

The Regulatory Reform (Fire Safety) Order 2005

Alterations notices

29. —(1) *The enforcing authority may serve on the responsible person a notice (in this Order referred to as "an alterations notice") if the authority is of the opinion that the premises—*

(a) constitute a serious risk to relevant persons (whether due to the features of the premises, their use, any hazard present, or any other circumstances); or

(b) may constitute such a risk if a change is made to them or the use to which they are put.

(2) An alterations notice must—

(a) state that the enforcing authority is of the opinion referred to in paragraph (1); and

(b) specify the matters which in their opinion, constitute a risk to relevant persons or may constitute such a risk if a change is made to the premises or the use to which they are put.

(3) Where an alterations notice has been served in respect of premises, the responsible person must, before making any of the changes specified in paragraph (4) which may result in a significant increase in risk, notify the enforcing authority of the proposed changes.

(4) The changes referred to in paragraph (3) are—

(a) a change to the premises;

(b) a change to the services, fittings or equipment in or on the premises;

(c) an increase in the quantities of dangerous substances which are present in or on the premises;

(d) a change to the use of the premises.

(5) An alterations notice may include a requirement that, in addition to the notification required by paragraph (3), the responsible person must —

(a) take all reasonable steps to notify the terms of the notice to any other person who has duties under article 5(3) in respect of the premises;

~~*(b) record the information prescribed in article 9(7), in accordance with article 9(6);*~~

~~*(c) record the arrangements required by article 11(1), in accordance with article 11(2);*~~

and

(d) before making the changes referred to in paragraph (3), send the enforcing authority the following —

(i) a copy of the risk assessment; and

(ii) a summary of the changes he proposes to make to the existing general fire precautions.

(6) An alterations notice served under paragraph (1) may be withdrawn at any time and, for the purposes of this article, the notice is deemed to be in force until such time as it is withdrawn or cancelled by the court under article 35(2).

(7) Nothing in this article prevents an enforcing authority from serving an enforcement notice or a prohibition notice in respect of the premises.

Article 29 Guidance Notes

The difference between an alterations notice and a prohibition notice is thin. The two are separated by the words “so serious ...” in terms of risk. The alterations notice allows for risks that are actually present and for risks that may be present at some future time. For a risk that is present on premises; serious consideration should be given to issuing a prohibition notice due to the fact that the premises present a serious risk to relevant persons. Indeed, there is no barrier to the enforcing authority issuing an alterations notice in combination with any other notice where this is reasonable and appropriate.

For the situation whereby the premises potentially present a risk to relevant persons; the enforcing authority must be sure that it is reasonably foreseeable that the risk might come to pass. Article 29 was re-drafted as it progressed through parliament to make this the case¹⁰⁸. The argument centred about the use of ‘any change’ (wide ranging) and ‘a change’ (specific) in the drafting of article 29(2)(b). The way in which the article was originally drafted gave enforcing authorities an unlimited power to issue alterations notices because it is possible in (almost) every premises to make a change (of any nature) to the premises that would lead to the premises posing a serious risk to relevant persons. The re-drafted article requires the enforcing authority to state what the change (a particular change) is that might be made that will lead to the premises posing a serious risk to relevant persons. Hence the risk to relevant persons will either be present or reasonably foreseeable.

Whereas article 29(3) requires the responsible person to inform the enforcing authority before making changes, the responsible person is not precluded from making the intended changes once the enforcing authority has been informed. It is therefore in the interests of

¹⁰⁸ See House of Commons Regulatory Reform Committee, *Draft Regulatory Reform (Fire Safety) Order 2005 Ninth Report of Session 2004-05 Report, together with formal minutes and written evidence*, HC 495, [online], 2005, London, The Stationery Office Limited, Available from: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmdereg/495/495.pdf> [Accessed 25 November 2014], Para 45-53

the responsible person, the enforcing authority and relevant persons that notification received in accordance with article 29(3) is acted upon swiftly following receipt of the notification.

Where it is mandatory for the alterations notice to include the matters listed at 29(2) and for the responsible person to notify the enforcing authority of the relevant changes listed at 29(4) before making those changes; the requirements listed at 29(5) are discretionary to the enforcing authority and therefore may be included in the requirements of an alterations notice (or not). The relevant changes listed at 29(4) are noted because, where the changes listed will not result in the significant increase in foreseeable risk, they need not be included in the notice.

The discretionary nature of the requirements listed at 29(5) is of particular importance where the premises in question do not ordinarily meet the criteria for having to record the prescribed risk assessment information, as the alterations notice may go beyond the usual requirements of recording information given at article 9(6). Where such information has been required in an alterations notice, it should be noted that any failure of the responsible person to comply with the requirements of 29(5) is not an offence. The requirements listed at 29(5)(b) and 29(5)(c) become enforceable when made subject of an enforcement notice.

The requirement to provide the enforcing authority with a copy of the risk assessment at 29(5)(d)(i) is the only place in the Order where the responsible person is required to supply a 'risk assessment' (instead of prescribed information stemming from the assessment) and it is a requirement that is not enforceable by virtue of the fact that non-compliance is not an offence.

By contrast it is an offence for any responsible person or article 5(3) duty holder to fail to comply with article 29(3) or 29 (4).

Once served, an alterations notice that is not subject to an appeal and that has not been withdrawn or cancelled will remain in force.

Article 29 FAQ

- Q. Can an Alterations notice be issued on persons other than the responsible person?**
- A. No. Although other notices may be issued on article 5(3) duty holders in addition to responsible persons, the alterations notice can only be issued to direct responsible persons. The Alterations notice incorporates the potential requirement for the recipient to inform article 5(3) duty holders. This requirement was specifically included within the Order as it progressed through parliament.¹⁰⁹

¹⁰⁹ House of Commons Regulatory Reform Committee, Draft Regulatory Reform (Fire Safety) Order 2005 Ninth Report of Session 2004-05, HC 495, Op Cit, Para 49-52

Article 30—Enforcement notices

The Regulatory Reform (Fire Safety) Order 2005

Enforcement notices

30. —(1) *If the enforcing authority is of the opinion that the responsible person or any other person mentioned in article 5(3) has failed to comply with any provision of this Order or of any regulations made under it, the authority may, subject to article 36, serve on that person a notice (in this Order referred to as "an enforcement notice").*

(2) *An enforcement notice must—*

(a) *state that the enforcing authority is of the opinion referred to in paragraph (1) and why;*

(b) *specify the provisions which have not been complied with; and*

(c) *require that person to take steps to remedy the failure within such period from the date of service of the notice (not being less than 28 days) as may be specified in the notice.*

(3) *An enforcement notice may, subject to article 36, include directions as to the measures which the enforcing authority consider are necessary to remedy the failure referred to in paragraph (1) and any such measures may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention.*

(4) *Where the enforcing authority is of the opinion that a person's failure to comply with this Order also extends to a workplace, or employees who work in a workplace, to which this Order applies but for which they are not the enforcing authority, the notice served by them under paragraph (1) may include requirements concerning that workplace or those employees; but before including any such requirements the enforcing authority must consult the enforcing authority for that workplace.*

(5) *Before serving an enforcement notice which would oblige a person to make an alteration to premises, the enforcing authority must consult—*

(a) *in cases where the relevant local authority is not the enforcing authority, the relevant local authority;*

(b) *in the case of premises used as a workplace which are within the field of responsibility of one or more enforcing authorities within the meaning of Part 1 of the Health and Safety at Work etc Act 1974, that authority or those authorities; and section 18(7) of the Health and Safety at Work etc Act 1974 (meaning in Part I of that Act of "enforcing authority" and of such an authority's "field of responsibility") applies for the purposes of this article as it applies for the purposes of that Part;*

(c) *in the case of a building or structure in relation to all or any part of which an initial notice given under section 47 of the Building Act 1984 is in force, the approved inspector who gave that initial notice;*

(d) in the case of premises which are, include, or form part of, a designated sports ground or a sports ground at which there is a regulated stand, the relevant local authority, where that authority is not the enforcing authority; and for the purposes of this sub-paragraph, "sports ground" and "designated sports ground" have the same meaning as in the Safety of Sports Grounds Act 1975 and "regulated stand" has the same meaning as in the Fire Safety and Safety of Places of Sport Act 1987;

(e) any other person whose consent to the alteration would be required by or under any enactment.

(6) Without prejudice to the power of the court to cancel or modify an enforcement notice under article 35(2), no failure on the part of an enforcing authority to consult under paragraphs (4) or (5) makes an enforcement notice void.

(7) Where an enforcement notice has been served under paragraph (1)—

(a) the enforcing authority may withdraw the notice at any time before the end of the period specified in the notice; and

(b) if an appeal against the notice is not pending, the enforcing authority may extend or further extend the period specified in the notice.

Article 30 Guidance Notes

Article 30 provides a statutory duty for enforcement notices to contain certain information, specifically: to state that the responsible person (or article 5(3) duty holder) has failed in some way to comply with the requirements of the Order; to state in particular those provisions which have not been complied with; and to require the responsible person (or article 5(3) duty holder) to remedy the failure. It should be noted that enforcement notices cannot be issued on duty holders defined directly at article 5(4) (those having obligations in relation to contract or tenancy). These duty holders are accounted for as if included in article 5(3) as a person having control of the premises.

This statutory duty is supplemented by a statutory power to include directions as to how the failure might be rectified in an enforcement notice and additionally that any such direction can allow for other methods of compliance. Most enforcing authorities have determined that this statutory power will be routinely exercised. Indeed, the Hampton Principles¹¹⁰ and The Regulators Code¹¹¹ suggest that in cases of higher risk, greater direction should be given and that where there is only one reasonable means by which to correct the failure, the direction given should be specific to that one reasonable means. Where the risk is lower, greater flexibility as to how failures may

¹¹⁰ Philip Hampton, Op Cit

¹¹¹ Better Regulation Delivery Office. *Regulators' Code – Statutory Code of Practice for Regulators*, [online], April 2014, London: Department for Business Innovation and Skills. Available from: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf> [Accessed 24 November 2014]

be rectified may be appropriate.

In cases where the action of the enforcement notice is likely to require corrective action in premises that lie beyond the boundary jurisdiction of the issuing enforcing authority; the issuing enforcing authority must consult with those enforcing authorities relevant to the notice that lie beyond the boundary of jurisdiction.

Enforcing authorities are required to consult with such other persons and authorities as listed at article 30(5)(a)-(e) before issuing an enforcement notice, but a failure on the part of the enforcing authority to consult, as directed, does not make the enforcement notice void.

Where an appeal is pending the enforcing authority cannot extend the time specified in an enforcement notice, neither can the enforcement notice be withdrawn. The minimum time that may be given for compliance with an enforcement notice is 28 days and the latest (stated) opportunity the recipient has to lodge an appeal is 21 days. Many courts will allow an appeal to hold beyond this specified time to allow for delays in postage etc. The limit of time allowed for appeal rests on the discretion of the court. Therefore, where the minimum time period has been given to a recipient for compliance with an enforcement notice, the enforcing authority will have no option but to attend the appeal, if an appeal is requested, since the notice cannot be withdrawn by the authority (including instances where the notice has been served in error, in some way).

Article 30 FAQ

- Q. 30(4) Can this be used to rectify the same deficiencies in different premises? e.g. if we inspect 2 or more premises with the same responsible person and find the same or similar problems can we issue one enforcement notice to cover all the premises?**
- A. 30(4) is about acting out of normal jurisdiction (i.e. where a company has premises in another County), or the premises would not normally be enforced by the authority serving the notice i.e. to cover a branch of a shop in a designated sports stadium. A notice under 30(1) served on a responsible person could cover multiple outlets (e.g. if it appeared that the management policy was flawed, or no risk assessments had been carried out) but whether that is appropriate or separate notices should be served will depend on the circumstances of the case.
- Q. 30(5)(a) was there an expectation that we would wait for a reply before issuing a notice?**
- A. There is an expectation that a consultee will be given a reasonable opportunity to comment.
- Q. 30(5)(d) in this case where would the local authority not be the enforcing authority?**
- A. There can be a number of cases where this could arise e.g. hotels or other premises which are linked to the stadium but not covered by the safety certificate or simply

parts of a non-designated sports ground (changing rooms, concession stands, the pitch) that contains a regulated stand but are not part of that stand.

Q. Can more than one enforcement notice be served with stepped timescales for completion?

A. Yes, there may be occasions whereby it is appropriate to serve an enforcement notice and based upon the risk the timescale should be staged. A practical example would be where it may be appropriate to expect a responsible person to undertake a fire risk assessment in a shorter timescale than that expected for them to procure and install a fire alarm and detection system. Therefore, two notices could be issued with different timescales for completion.

Q. What would be an example of the authorities that need to be consulted to satisfy article 30(5)(e)?

A. An example is the conservation officer in relation to heritage sites.

Q. What is the effect of an enforcement notice in the event that premises are vacated, undergo a change of use or undergo a change in ownership?

A. The notice is served on a person and as such does not rest on the premises, despite the fact that the premises may pose a risk to relevant persons.

Q. Would a single enforcement notice that specified different timescales for completion be legally robust?

A. No. The wording of the Order allows for one period to be specified within a notice. Where there is an indication from responsible persons that they would prefer to complete any works over various periods of time, it may be more expedient to agree an action plan with the responsible person, which is periodically monitored by the enforcing authority.

Article 31—Prohibition notices

The Regulatory Reform (Fire Safety) Order 2005

Prohibition notices

31. —(1) *If the enforcing authority is of the opinion that use of premises involves or will involve a risk to relevant persons so serious that use of the premises ought to be prohibited or restricted, the authority may serve on the responsible person or any other person mentioned in article 5(3) a notice (in this Order referred to as "a prohibition notice").*

(2) *The matters relevant to the assessment by the enforcing authority, for the purposes of paragraph (1), of the risk to relevant persons include anything affecting their escape from the premises in the event of fire.*

(3) *A prohibition notice must—*

(a) state that the enforcing authority is of the opinion referred to in paragraph (1);

(b) specify the matters which in their opinion give or, as the case may be, will give rise to that risk; and

(c) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the specified matters have been remedied.

(4) *A prohibition notice may include directions as to the measures which will have to be taken to remedy the matters specified in the notice and any such measures may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the matters.*

(5) *A prohibition or restriction contained in a prohibition notice pursuant to paragraph (3)(c) takes effect immediately it is served if the enforcing authority is of the opinion, and so states in the notice, that the risk of serious personal injury is or, as the case may be, will be imminent, and in any other case takes effect at the end of the period specified in the prohibition notice.*

(6) *Before serving a prohibition notice in relation to a house in multiple occupation, the enforcing authority shall, where practicable, notify the local housing authority of their intention and the use which they intend to prohibit or restrict.*

(7) *For the purposes of paragraph (6)—*

"house in multiple occupation" means a house in multiple occupation as defined by sections 254 to 259 of the Housing Act 2004, as they have effect for the purposes of Part 1 of that Act (that is, without the exclusions contained in Schedule 14 to that Act); and

"local housing authority" has the same meaning as in section 261(2) of the Housing Act 2004.

(8) Without prejudice to the power of the court to cancel or modify a prohibition notice under article 35(2), no failure on the part of an enforcing authority to notify under paragraph (6) makes a prohibition notice void.

(9) Where a prohibition notice has been served under paragraph (1) the enforcing authority may withdraw it at any time.

(10) In this article, "premises" includes domestic premises other than premises consisting of or comprised in a house which is occupied as a single private dwelling and article 27 (powers of inspectors) shall be construed accordingly.

Article 31 Guidance Notes

'Prohibition notice' is a general term given to any notice issued to prohibit or restrict the use of any premises because the standard of general fire precautions provided has fallen so far below the expected standards that relevant persons are placed at risk of death or serious injury, and consequently the use must be prohibited or restricted in order to assure the safety of relevant persons. The aspect of reasonable foresight that occurs with an alterations notice does not apply. The hazard bringing about the risk of death or serious injury to relevant persons must be either present at the time of the inspection / audit or be certain to occur at some specified future time. An example of the former is that life is currently at risk due to some failure to provide general fire precautions, whereas an example of the later may be a situation in which the relevant persons are not currently present but will arrive at a later (known / predictable) time.

The notice may be served on the responsible person or article 5(3) duty holder but not other duty holders (with obligations in relation to contract or tenancy agreements). In the case of prohibition notices the risk to relevant persons must be present.

Similarly, to enforcement notices, the prohibition notice includes statutory duties as to what must be included in the notice and statutory powers (regarding what may be included in the notice at the discretion of the enforcing authority). Where prohibition notices have been served (being associated with the most severe level of risk) corrective direction subsequently issued by enforcing authorities should include specific direction as to how the risk can most easily be reduced.

Dissimilar from an enforcement notice, where an appeals process is open to the responsible person which has the effect of suspending the operation of the notice, when issued with a prohibition notice, the appeal does not suspend the notice, because of the severity of the risk involved.

Paragraph 10 acts to extend the meaning of the term premises to include domestic dwellings that would otherwise sit outside the scope of the Order. By so doing, relevant persons (occupying premises that do not constitute a house occupied as a single private dwelling) may be saved from the risk of death or serious injury that might impact upon them from hazards posed by the undertaking of a responsible person who, in turn, owes a duty to provide premises that are safe to the relevant persons. In this sense a prohibition notice may not be

served on the relevant person¹¹² in the domestic premises above a commercial undertaking; rather the notice may extend the scope of the notice (i.e. by extending the term ‘premises’) to include the domestic dwelling within the prohibition. A prohibition notice may only be served on a direct responsible person or an article 5(3) duty holder.

Premises constituting of or comprised in a ‘house’ which is occupied as a single private dwelling continue to lie outside the meaning of ‘premises’. The Housing Act 2004, Chapter 34, Part , Supplementary provisions, Section 99 gives meaning to the terms “House” etc. It states “*In this Part—*

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“house” means a building or part of a building consisting of one or more dwellings;

and reference to a house include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, it (or any part of it)”

By reference to the Housing Act in this way, it can be seen that dwellings may be building or part of buildings and that for premises to consist of or be comprised in a house which is occupied as a single private dwelling, the ‘house’ must be building occupied as a single dwelling or a part of a building consisting of one dwelling. This might explain why the Fire Safety Act 2021¹¹³ makes reference to buildings containing ‘two or more sets of domestic premises’ i.e., to exclude from the scope of the Act premises consisting of or comprised in a house which is occupied as a single private dwelling.

For situations in which relevant persons in domestic premises over commercial premises are at risk so serious that the premises ought to be prohibited or restricted, enforcing authorities should consider prohibiting the commercial premises in the first instance. Where this action does not spare relevant persons from the risk of death or serious injury e.g. commercial and domestic premises share a common staircase which terminates in a kitchen and the prohibiting of the commercial premises does not reduce the risk to relevant persons, the scope of the term ‘premises’ may be broadened to include the domestic premises that do not constitute a house occupied as a single private dwelling.

Where an enforcing authority intends to use a prohibition notice to such an extent as to bring domestic dwellings (forming a house in multiple occupation) within its scope, the enforcing authority is expected to liaise with the local housing authority; albeit that if the enforcing authority fails to do so, the notice continues to be valid.

Article 31 FAQ

Q. Does article 31(2) suggest that only matters that affect means of escape can be used to prohibit / restrict premises?

¹¹² Notwithstanding the limitations imposed on whom the notice may be served, it should be noted that a failure to comply with the terms of the notice by any person, may constitute an offence.

¹¹³ Fire Safety Act (c.24)

A. Prohibition or restriction can be applied in any case where an enforcing authority considers that continued use of the premises in current form involves or will involve serious risk to relevant persons in case of fire. Although 31(2) highlights anything affecting escape from the premises in case of fire, the article is not limited to prohibition or restriction on just that basis. 31(2) specifies that the matters relevant “include” anything affecting escape from the premises in case of fire and doesn’t make use of the article exclusive to means of escape issues.

Q. Why was a definition of HMO used in article 31(7) which is different from the definition given for domestic premises?

A. Use of the definition of HMO¹¹⁴ in article 31(7) is limited in its context to the requirement to notify the housing authority contained in 31(6). The purpose of this notification is, so far as is reasonably practicable to let the housing authority know that multiple persons (possibly multiple families) may be about to be made temporarily homeless and so that it may be necessary to put emergency arrangements into action. There is also a need for the housing authority to be aware as they may need to deal with other, non-fire safety issues in the premises.

Q. 31(10) Explain ‘house’ in this context?

A. It is a specific class of domestic premises and should be read in the way “house” is understood in common form. The purpose of this paragraph is to allow an article 31 notice to be served on the whole of an HMO, a block of flats or a maisonette despite the fact that the individual bed-sits, flats or floors would otherwise be outside the scope of the Order as “domestic premises”. Further help may be found from the Housing Act¹¹⁵, which defines the meaning of ‘Dwelling’ and ‘House’ as “... a building or part of a building occupied as or intended to be occupied as a separate dwelling” and “a building or part of a building consisting of one or more dwellings” respectively, as discussed in the guidance (above). By extrapolation, a ‘house which is occupied as a single private dwelling’ means a building or part of a building consisting of and occupied as one separate dwelling. Therefore, a house which is occupied as a single private dwelling is a single and separate dwelling.

Q. Where domestic premises have means of access / egress that are independent of commercial premises below but the fire resistance between commercial and domestic premises is insufficient, does article 31(10) apply?

A. It depends on whether the failure to provide fire resistance amounts to placing relevant persons at risk of death or serious injury. Where relevant persons are at such risk, the premises may be seen as constituting one premises, despite the use of part of the premises as a dwelling.

¹¹⁴ The description of a HMO was redefined in accordance with SI 2018 No. 221—The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018; see Article 4. Applies to England only.

¹¹⁵ Housing Act 2004, Chapter 34, Part 3, Supplementary provisions, Section 99

Q. Where can I find additional practical guidance on prohibition notices?

A. CPL have produced guidance 'Circular 2010-023 The Regulatory Reform Fire Safety Order 2005, Article 31 Guidance Notes'

Q. Is it necessary to issue an enforcement notice whenever a prohibition notice has been served?

A. A prohibition notice should be issued with a notice giving direction as to the measures that are required to be taken sufficient to lifting the notice. The standard of fire safety within premises that pose a risk so serious that the premises ought to be prohibited is such that there are likely to be failures in fire safety matters that are not so serious. These subsequent matters should be dealt with by virtue of an enforcement notice. There is no reason why different types of notice may not be issued simultaneously.

Q. What is the status of a prohibition notice in the event that premises:

- i) change ownership;**
- ii) become unoccupied;**
- iii) undergo a change of use;**
- iv) undergo a change of responsible person; or**
- v) self-impose a voluntary prohibition?**

A. To answer each element of the question in turn:

- i) The notice is served on the responsible person (or article 5(3) duty holder) in relation to the premises for which they are responsible. A change in ownership may not affect the status of the notice if the person on whom the notice has been served is different from the owner. Where the owner is the person on whom the notice has been served, that person's control of the premises will cease when the ownership changes. There is undoubtedly a moral duty to pass on this information to the new owner but in any case, the notice would have to be re-issued. The new owner is required to carry out an assessment of the risk posed by fire and should identify the serious deficiencies in fire safety standards.
- ii) For premises having a prohibition notice, subsequently becoming unoccupied, the risk to relevant persons is removed. The notice may stay in force until the matters stated therein have been complied with, but the notice may be seen as effected. It may be prudent for the enforcing authority to issue an alterations notice in addition to the prohibition notice if the re-occupation of the premises and associated risk to relevant persons is reasonably foreseeable.
- iii) Where the use of premises has changed, the risk associated with that use may differ from that which gave rise to the prohibition notice being issued. Where this is the case a re-assessment of the situation will be required to determine whether the prohibition notice should continue to stand, should be amended and re-issued or withdrawn as the case may be.

- iv) Similarly, to (i) above, where the notice has been issued on the responsible person and they no longer have any control of or relation to the premises, the notice will have to be re-issued.
- v) A voluntary prohibition has no standing in law. Any subsequent non-compliance with the voluntary prohibition will not constitute an offence since no formal notice was issued. Any voluntary prohibition should have been identified within the fire risk assessment and the associated control measures highlighted therein.

Q. How do we check for compliance with a prohibition notice?

- A. Periodic re-inspection is appropriate where a prohibition notice has been served. The risk in the premises will be high and there is a duty on enforcing authorities to address places of highest risk. Confirming compliance may be difficult to prove in the case of sleeping accommodation, because the process of gaining access to premises to check if persons are sleeping often involves the rousing of potentially sleeping people.

Q. Can a prohibition notice remain in force on a premises forever?

- A. There is no expiration date associated with a prohibition notice and as such it will remain in force until satisfied, withdrawn or is cancelled or modified by the courts.

PART 4 OFFENCES AND APPEALS

Article 32—Offences

The Regulatory Reform (Fire Safety) Order 2005

Offences

32. —(1) *It is an offence for any responsible person or any other person mentioned in article 5(3) to—*

(a) fail to comply with any requirement or prohibition imposed by articles 8 to 22B and 38 (fire safety duties) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;

(b) fail to comply with any requirement or prohibition imposed by regulations made, or having effect as if made, under article 24 where that failure places one or more relevant persons at risk of death or serious injury in case of fire;

(c) fail to comply with any requirement imposed by article 29(3) or (4) (alterations notices);

(d) fail to comply with any requirement imposed by an enforcement notice;

(e) fail, without reasonable excuse, in relation to apparatus to which article 37 applies (luminous tube signs)—

(i) to ensure that such apparatus which is installed in premises complies with article 37 (3) and (4);

(ii) to give a notice required by article 37(6) or (8), unless he establishes that some other person duly gave the notice in question;

(iii) to comply with a notice served under article 37(9).

(2) It is an offence for any person to—

(a) fail to comply with article 23 (general duties of employees at work) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;

(b) make in any register, book, notice or other document required to be kept, served or given by or under, this Order, an entry which he knows to be false in a material particular;

(c) give any information which he knows to be false in a material particular or recklessly give any information which is so false, in purported compliance with any obligation to give information to which he is subject under or by virtue of this Order, or in response to any inquiry made by virtue of article 27(1)(b);

(d) obstruct, intentionally, an inspector in the exercise or performance of his powers or duties under this Order;

(e) fail, without reasonable excuse, to comply with any requirements imposed by an inspector under article 27(1)(c) or (d);

(f) pretend, with intent to deceive, to be an inspector;

(g) fail to comply with the prohibition imposed by article 40 (duty not to charge employees);

(h) fail to comply with any prohibition or restriction imposed by a prohibition notice.

(3) Any person guilty of an offence under paragraph (1)(a) to (d) and (2)(h) is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.

(4) Any person guilty of an offence under paragraph (1)(e)(i) to (iii) is liable on summary conviction to a fine ~~not exceeding level 3 on the standard scale.~~

(5) Any person guilty of an offence under paragraph (2)(a) is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

(6) Any person guilty of an offence under paragraph (2)(b), (c), (d) or (g) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Any person guilty of an offence under paragraph (2)(e) or (f) is liable on summary conviction to a fine ~~not exceeding level 3 on the standard scale.~~

(8) Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of that offence, and is liable to be proceeded against and punished accordingly.

(9) Where the affairs of a body corporate are managed by its members, paragraph (8) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(10) Where the commission by any person of an offence under this Order, is due to the act or default of some other person, that other person is guilty of the offence, and a person may

be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(11) Nothing in this Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of—

(a) an employee of his; or

(b) a person nominated under articles 13(3)(b) or 15(1)(b) or appointed under 18(1).

Article 32 Guidance Notes

This article sets out the offences that may be committed. These offences are separated into those offences for which responsible persons or article 5(3) duty holders can be held responsible and those for which ‘any person’ can be held responsible. There are no offences directed specifically at article 5(4) duty holders (those with obligations in relation to contract or tenancy). These duty holders are accounted for as if included in article 5(3) as a duty holder for the premises. The offences directed at responsible persons and article 5(3) duty holders are listed at 32(1)(a)-(e). It is here that the Order reveals that it is not an inherent offence to fail to comply with the requirements of the Order; only where that failure places one or more relevant persons at risk of death or serious injury. Other failures become offences when, under direction from a notice issued by an enforcing authority, the responsible person or article 5(3) duty holder fails to comply with the requirements of the notice.

The offences directed at ‘any person’ are listed at 32(2)(a)-(h) albeit that certain of those provisions are directed at employers 32(2)(g) and employees 32(2)(a).

Article 32 also provides for the sanctions that may be imposed following conviction for the various offences.

For offences committed by corporate bodies, both the corporate body and the individual officers of that body may be held to account for the offence.

Further advice as to the meaning of the offences and this article are dealt with in Guidance Note 1¹¹⁶.

In all cases of pursuing responsible persons, relevant duty holders or persons in general for the commissioning of an offence under the Order; enforcing authorities are encouraged to seek legal advice to assist them in this capacity.

¹¹⁶ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

Article 32 FAQ

Q. 32(1)(a) Give an example of where failure of article 38 can place a relevant person at risk?

A. Measures provided under B5 of the current Building Regulations are on the basis that:

“The building shall be designed and constructed so as to provide reasonable facilities to assist fire-fighters in the protection of life.”

If the facilities provided are not maintained and as a result cannot be used (or fully used by fire-fighting personnel) then the relevant persons may be at risk of death or serious injury. The facilities were installed to assist fire-fighters to protect relevant persons. A lack of maintenance may increase the risk to relevant persons of death or serious injury in case of fire.

Q. Please explain article 32(11) in relation to due diligence?

A. 32(11) qualifies article 33. In essence a responsible person cannot claim to have taken all reasonable precautions and exercised all due diligence if an offence is due to the act or default of an employee (something they did or something they should have done but did not) or is due to the act or default of a nominated or appointed “competent person”. In the latter case this is because the onus is on the responsible person to make sure the competent person is indeed ‘competent’ for the task they have been nominated or appointed for.

Q. What is meant by level 3 and level 5 on the standard scale?

A. There is a standard scale of penalty associated with summary cases (such as those principally taken under the Order). The scale is established in the Criminal Justice Act¹¹⁷. At present, level 3 equates to £1,000 (per offence) and level 5 equates to £5,000 (per offence).

Q. Has the principle of sentencing responsible persons on conviction on indictment to imprisonment, been tested in the Courts?

A. Yes. In the Appeal Courts re: Zulfiqar Mirza, Court of Appeal Criminal Division, Cor: The Hon. Mrs Justice Dobbs and the Recorder of Norwich 29 November 2012, an appeal was listed for against a sentence imposed by Magistrates on the grounds of the sentence being wrong in principle and manifestly excessive. At the lower court the appellant was sentenced to 3 months custody suspended for 12 months with a requirement he complete 200 hours unpaid work.

The Court did not find the sentence was wrong in principle and did not find that the Judge at the lower court erred in passing a custodial sentence. The number of unpaid work was reduced to 100 hours. Of note is that the Judge that deemed the matter crossed the custody threshold was not wrong in principle (even in light of the fact that Mr. Mirza was of good character and pleaded guilty at the Magistrates’ Court).

¹¹⁷ Criminal Justice Act 1982, 1982 CHAPTER 48, Section 37

Judges in the Court of Appeal are obliged to look carefully at the precedents cited in the parties' skeleton arguments. The appellant's counsel relied heavily on the Court of Appeal's judgment in O'Rourke, (see guidance to article 5) there can be little doubt that the judges had read and been influenced by the fact that the Order provides for sentences of imprisonment for responsible persons, such as Mr. Mirza as well as for risk assessors like Mr. O'Rourke.

Article 33—Defence

The Regulatory Reform (Fire Safety) Order 2005

Defence

33. *Subject to article 32(11), in any proceedings for an offence under this Order, except for a failure to comply with articles 8(1)(a) or 12, it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.*

Article 33 Guidance Notes

Those with duties under the Order may be able to shield themselves in the event of an action being taken against them for a fire-related offence. This shield of defence is that they ‘took all reasonable precautions and exercised all due diligence to avoid the commissioning of the offence’.

The shield is removed for failures under article 8(1)(a) and article 12.

For responsible persons who are not employers and for ‘employer’ responsible persons where the risk of death or serious injury from fire has been caused to a non-employee; the defence is more readily available as all they must show is that they did all they could reasonably do to make the premises safe.

Where an employee has been put at risk of death or serious injury, the employer responsible person does not have the defence at article 33 available to him. This is an example of the strict liability under which an employer is held by the Order. Their responsibility for their employees is absolute.

The potential absence of a defence may demonstrate that the employer can control the actions of employees and as such can avoid harm being caused to them, even if this can only be achieved by not opening for business.

This does not mean that the employee cannot be equally or partly liable for any failure, but that the employer is not provided with a defence.

Article 33 FAQ

- Q. Why are Articles 8(1)(a) and 12 not included in the defence?**
- A.** These requirements relate to absolute duties under European law and a defence of due diligence is not allowed in respect of them.
- Q. What is meant by the term “all reasonable precautions and exercised all due diligence to avoid the commission of the offence?”**
- A.** The question has two terms; ‘all reasonable precautions’ and ‘exercised all due diligence’. The former requires suitable and appropriate safety systems to be put

in place, while the latter refers more closely to seeing that those systems are adequately maintained and remain appropriate. Due diligence also has a place in the former term, whereby due diligence can be shown in selecting, specifying, and installing safety systems to appropriate standards and by suitably trained installers, as a failure to demonstrate due diligence at each step can lead to a failure of the safety system, when it is needed. All these elements may have to be in place if a 'due diligence defence is to be successfully argued. That the responsible person has implemented suitable and sufficient general fire precautions (demonstrating due diligence at each stage of selection, specification and installation) and that those precautions withstand the tests of ALARP and SFAIRP. By making every effort to comply with the requirements and prohibitions imposed on them by the Order, the responsible person may demonstrate that they have exercised all due diligence to avoid committing an offence.

Article 34—Onus of proving limits of what is reasonably practicable

The Regulatory Reform (Fire Safety) Order 2005

Onus of proving limits of what is practicable or reasonably practicable

34. *In any proceedings for an offence under this Order consisting of a failure to comply with a duty or requirement so far as is practicable or so far as is reasonably practicable, it is for the accused to prove that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement.*

Article 34 Guidance Notes

There are only certain situations for which the burden of proof operates in this way. Only those requirements that should be satisfied by the responsible person ‘so far as is practicable’ or ‘so far as is reasonably practicable’ are subject to article 34 and appear only three times in the Order:

- article 8(1)(a)—duty owed to employees;
- article 12 (at sub-paragraphs 1, 2, 3)— relating to dangerous substances; and
- article 15(2)(a)— informing relevant persons of the nature of serious and imminent danger and of the steps taken or to be taken to protect them from it.

Where compliance is required with other articles under the Order, article 34 does not apply. Other requirements (those that do not require compliance ‘so far as is practicable’ or ‘so far as is reasonably practicable’) are not subject to this reversal in the burden of proof and the burden falls on the enforcing authority to prove that an offence was committed.

The burden of proof for an offence under the Order (where the article requires compliance ‘as far as practicable’ or ‘as far as is reasonably practicable’) rests with the accused to prove that the actions they took to comply with those requirements were at the limit of what was practicable. Similar to other requirements and articles of the Order this is likely to result in reference to the principles of SFAIRP and ALARP¹¹⁸. These requirements could be viewed to have been satisfied if the impact of having done more would have been grossly disproportionate to the benefit gained.

Where (in the case of harm or the risk of death or serious injury to an employee) an employer successfully proves the actions he has taken are sufficient to comply with the Order; such a demonstration might be seen to amount to a defence. Note should be taken that no defence is available to an employer for failures to comply with the duties of an employer under articles 8(1)(a), 12 and 15(2)(a) according to article 33¹¹⁹. Although the employer might prove that the actions taken were reasonably practicable, he continues to have no defence by virtue of article 33.

¹¹⁸ See article 2 of this interpretation document for detail of SFAIRP and ALARP

¹¹⁹ See article 33 of this interpretation document

Article 34 FAQ

Q. What is considered to be reasonably practicable?

A. For information relating to requirements of 'so far as is reasonably practicable' refer to the FSO Guidance Notes to article 2 in this document.

Additionally, an Australian bulletin¹²⁰ referring to their Work Health and Safety Act and Regulations provides one definition of the term, which may be of interest in cases relating to the Order.

"How is 'reasonably practicable' defined?"

In this context, reasonably practicable means that which is, or was at a particular time, reasonably able to be done to ensure health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring*
- (b) the degree of harm that might result from the hazard or the risk*
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk, and ways of eliminating or minimising the risk*
- (d) the availability and suitability of ways to eliminate or minimise the risk, and*
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk."*

Q. What does this article mean for the responsible person?

A. In essence, the responsible person must prove that the measures that have been taken would have been taken by any other reasonable and competent person in the same position and in the same circumstances.

¹²⁰ Safe Work Australia, 'Interpretive Guideline – Model Work Health and Safety Act The Meaning of 'Reasonably Practicable' [Online] Australia Government, available from: <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/607/Interpretive%20guideline%20-%20reasonably%20practicable.pdf> [Accessed 25 November 2014]

Article 35—Appeals

The Regulatory Reform (Fire Safety) Order 2005

Appeals

35. —(1) A person on whom an alterations notice, an enforcement notice, a prohibition notice or a notice given by the fire and rescue authority under article 37 (fire-fighters' switches for luminous tube signs) is served may, within 21 days from the day on which the notice is served, appeal to the court.

(2) On an appeal under this article the court may either cancel or affirm the notice, and if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(3) Where an appeal is brought against an alterations notice or an enforcement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

(4) Where an appeal is brought against a prohibition notice, the bringing of the appeal does not have the effect of suspending the operation of the notice, unless, on the application of the appellant, the court so directs (and then only from the giving of the direction).

(5) In this article "the court" means a magistrates' court.

(6) The procedure for an appeal under paragraph (1) is by way of complaint for an order, and—

(a) the Magistrates' Courts Act 1980 applies to the proceedings; and

(b) the making of the complaint is deemed to be the bringing of the appeal.

(7) A person aggrieved by an order made by a magistrates' court on determining a complaint under this Order may appeal to the Crown Court; and for the avoidance of doubt, an enforcing authority may be a person aggrieved for the purposes of this paragraph.

Article 35 Guidance Notes

This article provides for appeals to be brought against the notices issued in accordance with the Order.

It is here that the effect of the bringing of the appeal on the various notices can be determined. Appeals may be brought within 21 days of the notice being issued, although to some extent, whether an appeal is accepted or not is at the discretion of the court. Reasonable allowances for postage may be taken into account.

For alterations notices and enforcement notices the bringing of the appeal suspends the notice. Where the notice is not withdrawn, the appeal must be heard and disposed of by the (magistrates) court. When an appeal against an issued enforcement notice has been registered, the notice may not be withdrawn by the enforcing authority if the end of the period specified in the notice has passed (article 30(7)(a)). This means that, if for example

the minimum period of 28 days has been given to complete work, the notice may not be withdrawn after 28 days has passed. Furthermore, no extension of time to comply with the notice can be granted for an enforcement notice where an appeal is pending (article 30(7)(b)). Conversely appeals brought against prohibition notices do not have the effect of suspending the notice unless the court so directs.

Where an appeal is heard and the decision of the court is unsatisfactory to either party, an appeal may be made to the Crown Court.

Article 35 FAQ

Q. What is the difference between a formal appeal and an informal appeal?

A. A formal appeal is one which has been registered with the courts; an informal appeal (or challenge to an enforcement action) is generally from the responsible person to the enforcing authority (perhaps by way of the authority complaint procedure). In general terms an appeal or challenge may be seen to relate to a regulatory or enforcement decision, whereas a complaint may relate to officer behaviour. To help clarify distinctions, work was undertaken by the NFCC (then CFOA) in consultation with the Office for Product Safety and Standards (then Better Regulation Delivery Office) and suggested the term ‘informal appeal’ should be slipped to ‘informal challenge’. In this way responsible persons have the opportunity to informally challenge a regulatory or enforcement decision outside the jurisdiction of the Courts, appeal a regulatory or enforcement decision through the formal legal process and to complain about officer behaviour.

Q. What action should be taken by enforcing authorities when complaints about enforcement are received and / or disputes arise about technical fire safety requirements?

A. [From DCLG, as part of response given in FAQ at Article 6]. If responsible persons / duty holders are unhappy with the advice received from a local fire safety officer, DCLG suggests the matter be raised with a senior manager in the fire safety department, or with a member of the local fire and rescue authority. If resolution is not achieved locally with the fire and rescue authority, the complaint may be escalated by way of a complaint to the Local Government Ombudsman or by taking independent legal advice on the matter.

Every enforcing authority should have in place a complaints procedure that will be followed for regulatory complaints in order to comply with the Regulators’ Code¹²¹. An initial referral to a senior manager may be a reasonable ‘first step’, but before escalation to the LGO, it may be more appropriate to engage relevant representatives of the NFCC Protection and Business Safety Coordinating

¹²¹ Better Regulation Delivery Office. *Regulators’ Code* [online], 2014, London: Department for Business Innovations & Skills, available from:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf> [accessed 21/05/2018]

Committee or regional peers, who may be able to provide a 'sense check' and to provide advice on how to progress.

N.B. the complaints referred to in this FAQ are distinct from disagreements of the technical means by which fire safety failures should be resolved and therefore suitable for progressing to a determination by the Secretary of State under article 36.

Q. What should I do if I receive notification of a formal appeal?

A. Acknowledge the appeal through the courts and enter into dialogue with the responsible person to try and resolve the issue out of court. This will reduce the burden on court time. If successful, both parties will write to the courts explaining the issue is resolved and will bear their own costs.

If negotiations fail to resolve the issue, then the enforcing authority will need to gather evidence to present to the court to justify its enforcement decision.

Q. Can an enforcing authority appeal against the judgment of a magistrate's court?

A. Yes. Article 35 (7) makes provision for an enforcing authority to be considered as an aggrieved person.

Article 36—Determination of disputes by Secretary of State

The Regulatory Reform (Fire Safety) Order 2005

Determination of disputes by Secretary of State

36. —(1) *This article applies where—*

(a) a responsible person or any other person mentioned in article 5(3) has failed to comply with any provision of this Order or of any regulations made under it; and

(b) the enforcing authority and that person cannot agree on the measures which are necessary to remedy the failure.

(2) Where this article applies, the enforcing authority and the person referred to in paragraph (1)(a) may agree to refer the question as to what measures are necessary to remedy the failure referred to in paragraph (1)(a) to the Secretary of State for his determination.

(3) The Secretary of State may, by notice in writing to both parties, require the provision of such further information, including plans, specified in the notice, within the period so specified, as the Secretary of State may require for the purpose of making a determination.

(4) If the information required under paragraph (3) is not provided within the period specified, the Secretary of State may refuse to proceed with the determination.

(5) Where the Secretary of State has made a determination under this article, the enforcing authority may not, subject to paragraph (6), take any enforcement action the effect of which would be to conflict with his determination; and in this article, "enforcement action" means the service of an enforcement notice or the inclusion of any directions in an enforcement notice.

(6) Paragraph (5) does not apply where, since the date of the determination by the Secretary of State, there has been a change to the premises or the use to which they are put such that the risk to relevant persons has significantly changed.

Article 36 Guidance Notes

For the bringing of any dispute to determination by the Secretary of State, a number of conditions must be met. Failure to meet any of the following conditions indicates that the dispute is not suitable for a determination.

The conditions for the bringing of a dispute are:

- the responsible person or article 5(3) duty holder must agree with the enforcing authority that they have failed to comply with the requirements of the Order;

- there is disagreement between the parties of how best to rectify the failure; and
- the two parties agree to take the matter to dispute.

Disputes have been heard under the Order¹²² and tend to involve the Secretary of State requiring information from both sides of the dispute and attaching very short periods of compliance to those demands for more information. Where demands for information are not met by either party the determination may fail.

When the Secretary of State has received all required information within the periods specified, any determination reached by the Secretary of State is binding on both parties and in particular, the enforcing authority may not take enforcement action which is in conflict with the determination made.

Article 36 FAQ

Q. Does the responsible person have to admit they have failed to comply with the requirements of the Order for a dispute to be taken forward under this article?

A. Yes. The purpose of the article is to resolve cases where there is agreement that works are needed but disagreement about the acceptable technical solution to be used to achieve the desired outcome.

Q. Can the Secretary of State make a determination on a point of law?

A. No. This determinations procedure can only be used to resolve a technical issue and not a point of law, such as if an enforcing authority was to request that a responsible person should provide a written risk assessment and the responsible person disagrees that one is needed¹²³.

Q. What information does the enforcing authority need to provide?

A. Refer to FSO Guidance Note 2¹²⁴, but in reality, as much information to substantiate the enforcing authority's opinion regarding the matter in dispute. It would be useful to provide evidence of proportionality and cost effectiveness balanced against risk.

¹²² Communities and Local Government Fire and Rescue Service Circular 48/2009, *Secretary of State determination under article 36 of the Fire Safety Order*, Determination in respect of the fire safety adequacy of fire detection in a hotel (Ref 004/006/003)

¹²³ Communities and Local Government. *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 2 Determinations by the Secretary of State*, [online], 2010, London: CLG. Available from: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15113/1497577.pdf> [Accessed 25 November 2014]

¹²⁴ 2010, CLG, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No.2 Determinations by the Secretary of State*, March 2010

PART 5 MISCELLANEOUS

Article 37—Fire-fighters' switches for luminous tube signs etc.

The Regulatory Reform (Fire Safety) Order 2005

Fire-fighters' switches for luminous tube signs etc.

37. —(1) *Subject to paragraph (11), this article applies to apparatus consisting of luminous tube signs designed to work at a voltage normally exceeding the prescribed voltage, or other equipment so designed, and references in this article to a cut-off switch are, in a case where a transformer is provided to raise the voltage to operate the apparatus, references to a cut-off switch on the low-voltage side of the transformer.*

(2) In paragraph (1) the "prescribed voltage" means—

(a) 1000 volts AC or 1500 volts DC if measured between any two conductors; or

(b) 600 volts AC or 900 volts DC if measured between a conductor and earth.

(3) No apparatus to which this article applies is to be installed unless it is provided with a cut-off switch.

(4) Subject to paragraph (5), the cut-off switch must be so placed, and coloured or marked as to satisfy such reasonable requirements as the fire and rescue authority may impose to secure that it must be readily recognisable by and accessible to fire-fighters.

(5) If a cut-off switch complies in position, colour and marking with the current regulations of the Institution of Electrical Engineers for a fire-fighter's emergency switch, the fire and rescue authority may not impose any further requirements pursuant to paragraph (4).

(6) Not less than 42 days before work is begun to install apparatus to which this article applies, the responsible person must give notice to the fire and rescue authority showing where the cut-off switch is to be placed and how it is to be coloured or marked.

(7) Where notice has been given to the fire and rescue authority as required by paragraph (6), the proposed position, colouring or marking of the switch is deemed to satisfy the requirements of the fire authority unless, within 21 days from the date of the service of the notice, the fire and rescue authority has served on the responsible person a counter-notice stating that their requirements are not satisfied.

(8) Where apparatus to which this article applies has been installed in or on premises before the day on which this article comes into force, the responsible person must, not more than 21 days after that day, give notice to the fire and rescue authority stating whether the apparatus is already provided with a cut-off switch and, if so, where the switch is placed and how it is coloured or marked.

(9) Subject to paragraph (10), where apparatus to which this article applies has been installed in or on premises before the day on which this article comes into force, the fire and rescue authority may serve on the responsible person a notice—

(a) in the case of apparatus already provided with a cut-off switch, stating that they are not satisfied with the position, colouring or marking of the switch and requiring the

responsible person, within such period as may be specified in the notice, to take such steps as will secure that the switch will be so placed or coloured or marked as to be readily recognisable by, and accessible to, fire-fighters in accordance with the reasonable requirements of the fire and rescue authority; or

(b) in the case of apparatus not already provided with a cut-off switch, requiring him, within such period as may be specified in the notice, to provide such a cut-off switch in such a position and so coloured or marked as to be readily recognisable by, and accessible to, fire-fighters in accordance with the reasonable requirements of the fire and rescue authority.

(10) If a cut-off switch complies in position, colour and marking with the current regulations of the Institution of Electrical Engineers for a fire-fighter's emergency switch, the fire and rescue authority may not serve a notice in respect of it under paragraph (9).

(11) This article does not apply to—

(a) apparatus installed or proposed to be installed in or on premises in respect of which a premises licence under the Licensing Act 2003 has effect authorising the use of premises for the exhibition of a film, within the meaning of paragraph 15 of Schedule 1 to that Act; or

(b) apparatus installed in or on premises before the day on which this article comes into force where, immediately before that date—

(i) the apparatus complied with section 10(2) and (3) (requirement to provide cut-off switch) of the Local Government (Miscellaneous Provisions) Act 1982; and

(ii) the owner or occupier of the premises, as the case may be, had complied with either subsection (5) or subsection (7) (notice of location and type of switch) of section 10 of that Act.

Article 37 Guidance Notes

This article refers to discharge lighting installations, which include installations such as:

- Neon advertising signs.
- Floodlights.
- Luminous discharge signs.

These systems may operate at voltages that pose a hazard when fire-fighting operations are being undertaken. This is especially so when an exterior or interior discharge lighting installation is encountered, which is operating unattended.

The systems will normally be operating at “high” voltage (exceeding the minimum voltage for a “low” voltage categorisation). These systems should be controlled by an emergency switch commonly known as a fireman switch. These should be installed and situated in accordance with the Institution of Electrical Engineers Wiring Regulations for electrical installations and

may be supplemented as necessary by the requirements of the individual fire and rescue the authority within whose jurisdiction the premises are situated.

The initial commentary and the reasoning behind this section come from the first edition of BS 5588. The reference for this particular section is taken from part 2 (section 6 of the 1985 edition), page 37. Although this document has been withdrawn in part, it is considered that some of the advice contained therein is still of interest in this context.

Article 37 FAQ

Q. Why was this included in the Order?

A. This provision was brought forward from the Local Government (Miscellaneous Provisions) Act 1982. Similar (though not identical provision) was also made in a number of local Acts. Repealing the various provisions and re-enacting them in the Order removed overlap and ensured nationally consistent controls.

Q. Does this article apply to isolation switches associated with photovoltaic cells / panels for cases in which the prescribed voltages are met / exceeded?

A. The Order must apply to the premises in question, but assuming the voltages meet those prescribed, the article applies to 'other equipment' designed to work at voltages exceeding those prescribed. Therefore, if a transformer is needed to 'step-down' the voltage, the article can be applied.

Article 38—Maintenance of measures provided for protection of fire-fighters

The Regulatory Reform (Fire Safety) Order 2005

Maintenance of measures provided for protection of fire-fighters

38. —(1) *Where necessary in order to safeguard the safety of fire-fighters in the event of a fire, the responsible person must ensure that the premises and any facilities, equipment and devices provided in respect of the premises for the use by or protection of fire-fighters under this Order or under any other enactment, including any enactment repealed or revoked by this Order, are subject to a suitable system of maintenance and are maintained in an efficient state, in efficient working order and in good repair.*

(2) Where the premises form part of a building, the responsible person may make arrangements with the occupier of any premises forming part of the building for the purpose of ensuring that the requirements of paragraph (1) are met.

(3) Paragraph (2) applies even if the other premises are not premises to which this Order applies.

(4) The occupier of the other premises must co-operate with the responsible person for the purposes of paragraph (2).

(5) Where the occupier of the other premises is not also the owner of those premises, the reference to the occupier in paragraphs (2) and (4) are to be taken to be references to both the occupier and the owner.

Article 38 Guidance Notes

Where premises are equipped with protective measures designed for the use of fire-fighters; regardless of how those measures came to be in the premises, they must be maintained. It will be noted that fire-fighters engaged in operational duties are not relevant persons and that this article requires the maintenance of measures installed for the use by (or protection of) fire-fighters. This is to ensure that measures required under other legislation are not allowed to fall into disrepair. Also, it further safeguards the safety of relevant persons who, in a fire situation, may depend on fire service intervention. The intervention in turn relies on installed measures for the use of fire-fighters. If the measures are not adequately maintained and fail to function correctly when required, the lives of relevant persons may be put at risk.

Compliance with this article is not seen as providing another general fire precaution as it falls outside the scope of the meaning of general fire precautions given in the Order. The requirements for maintenance under this article are the same as those for maintenance at article 17 with regard to access to all parts of premises and maintaining the measures in an efficient state, efficient working order and in good repair.

Article 38 FAQ

Q. Explain ‘premises, facilities, equipment and devices’ in this context?

A. The phrase is a ‘catch-all’ and covers passive and active fire prevention and protection systems and equipment required by building regulations or any other legislation to be provided in premises for the use of or protection of fire-fighters. Common examples would be the elements that go to make up a fire-fighting shaft, including fire resistance, fire-doors, the lift and any wet or dry rising main. Requirements under local acts are also included e.g. roof water tanks provided under the London Building Acts as a source of water for fire fighting and hard standing for aerial appliances such as hydraulic platforms would also be covered.

Q. How does this article apply to private hydrants?

A. It applies in the same way and to the same extent as to a rising main or any other facility equipment or device.

Q. What effect has the repeal of Local Acts had on requirements under article 38?

A. DCLG, in correspondence with London Fire Brigade, has suggested that the requirements of Approved Document B5 to the Building Regulations are written to assist Fire and Rescue Services to protect life (whereas the Fire and Rescue Services Act 2004 imposes a duty to protect life and property). The revocations of Local Acts are intended to bring them into line with the main Building Regulations i.e. national regulations provide for fire safety and as such Local Act requirements create superfluous measures.

Article 17 should be used for the maintenance of anything required under a Local Act, where that requirement is necessary to protect life though fire-fighting and rescue work and without the relevant measure being in good working order that function cannot be successfully carried out and as such, relevant persons will be placed at risk (e.g. if fire fighters are unable to interact with the measure to control / extinguish a fire or to carry out rescues, people will be at risk of death or serious injury.

Q. Is it an offence under the Order for article 38 measures to fall into disrepair?

A. Not necessarily. As for any of the other provisions made under the Order, the failure to comply (in the case of article 38 to maintain measures provided for fire fighters) is not automatically an offence. The failure can be rectified through the serving of an enforcement notice (where a subsequent failure to comply with the notice is an offence under article 32(d). Where enforcing authorities can demonstrate that the safety of relevant persons is safeguarded through the provision of article 38 measures and that a risk of death or serious injury results from the failure to maintain the measure, an offence will have been committed subject to article 32(1)(a).

Article 39—Civil liability for breach of statutory duty

The Regulatory Reform (Fire Safety) Order 2005

Civil liability for breach of statutory duty

39. —(1) Subject to paragraph (2), nothing in this Order is to be construed as conferring a right of action in any civil proceedings (other than proceedings for recovery of a fine).

(2) Notwithstanding section 86 of the Fires Prevention (Metropolis) Act 1774, breach of a duty imposed on an employer by or under this Order, so far as it causes damage to an employee, confers a right of action on that employee in civil proceedings.

Article 39 Guidance Notes

No further interpretation or guidance can be provided at this time to supplement that given in Guidance Note 1¹²⁵.

Article 39 FAQ

Q. What is 'Civil Liability'?

A. The potential responsibility for payment of damages or other court-enforcement in a lawsuit, as distinguished from criminal liability which means open to punishment for a crime.

Q. What is 'Statutory Duty'?

A. A duty imposed by an Act of Parliament, otherwise known as legislation.

Q. What is 'Breach of duty'?

A. Breach of duty may be found to exist where the defendant fails to meet the standard required by law.

Q. What are 'Damages'?

A. Damages attempt to measure in financial terms the extent of harm a plaintiff has suffered because of a defendant's actions. Damages are distinguishable from costs, which are the expenses incurred as a result of bringing legal action and which the court may order the losing party to pay. Damages also differ from the verdict, which is the final decision issued by the court. The purpose of damages is to restore an injured party to the position the party was in before being harmed. As a result,

¹²⁵ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

damages are generally regarded as remedial rather than preventive or punitive. However, Punitive Damages may be awarded for particular types of wrongful conduct. Before an individual can recover damages, the injury suffered must be one recognised by law as warranting redress and must have actually been sustained by the individual.

Article 40—Duty not to charge employees for things done or provided

The Regulatory Reform (Fire Safety) Order 2005

Duty not to charge employees for things done or provided

40. No employer may levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any requirement of this Order or of regulations made under it.

Article 40 Guidance Notes

This article is self-explanatory.

Article 40 FAQ

No questions have been raised in relation to this article at this time.

Article 41—Duty to consult employees

The Regulatory Reform (Fire Safety) Order 2005

Duty to consult employees

41. —(1) *In regulation 4A of the Safety Representatives and Safety Committees Regulations 1977 (employer's duty to consult and provide facilities and assistance), in paragraph (1)(b), for "or regulation 4(2)(b) of the Fire Precautions (Workplace) Regulations 1997" substitute "or article 13(3)(b) of the Regulatory Reform (Fire Safety) Order 2005".*

(2) In regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996 (duty of employer to consult), in paragraph (b), for "or regulation 4(2)(b) of the Fire Precautions (Workplace) Regulations 1997" substitute "or article 13(3)(b) of the Regulatory Reform (Fire Safety) Order 2005".

Article 41 Guidance Notes

No further interpretation or guidance can be provided at this time to supplement that given in Guidance Note 1¹²⁶.

Article 41 FAQ

Q. What must employers consult employees about?

- A. In order to ensure that employees work in healthier and safer workplaces the employer must consult their employees on a number of points, these are;
- The introduction of any measure which may substantially affect their health and safety at work; for example, the introduction of new fire fighting equipment.
 - The arrangements for getting competent people to help them comply with the Order as well as other health and safety laws.
 - The information given to employees on the risks and dangers arising from their work, measures to reduce or remove these risks and the actions expected to be taken by employees should they be exposed to risk.
 - The planning and organisation of fire safety training; and
 - The fire safety consequences of introducing new technology.

Q. What does consultation with employees involve?

¹²⁶ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

- A. Consultation involves employers not only giving information to employees but also listening to and taking account of what they say before making any fire safety decisions in respect of general fire precautions.

The requirements within this article do not establish when employers must consult, or for how long, but does say it must be 'in good time'. In practice, this means they have to allow enough time for employees to consider the matters being raised and to provide informed responses.

Q. Why are there 2 parts to this article, rather than a single requirement to consult?

- A. Article 41 reflects existing Health and Safety Laws on employee consultation.

Article 41(1) is for the circumstances where the employer recognises trade unions in any part of the business and a safety representative has been appointed.

Article 41 (2) is provided for:

- employers that do not recognise trade unions
- employers that recognise a trade union, but safety representatives have not been appointed.
- employees who do not belong to a trade union and any recognised trade union has not agreed to represent them.

Q. Is further information available?

- A. The Health and Safety Executive have produced a brief guide to the law on employee consultation, this is available on their website¹²⁷.

¹²⁷ Health and Safety Executive, *Consulting Employees on Health and Safety – A brief guide to the law*, [online], 2013, London, available from: <<http://www.hse.gov.uk/pubns/indg232.pdf>> [Accessed 24 November 2014]

Article 42—Special provisions in respect of licensed etc. premises

The Regulatory Reform (Fire Safety) Order 2005

Special provisions in respect of licensed etc. premises

42. —(1) *Subject to paragraph (2), where any enactment provides for the licensing of premises in relation to which this Order applies, or the licensing of persons in respect of any such premises—*

(a) the licensing authority must ensure that the enforcing authority for the premises has the opportunity to make representations before issuing the licence; and

(b) the enforcing authority must notify the licensing authority of any action that the enforcing authority takes in relation to premises to which the licence relates; but no failure on the part of an enforcing authority to notify under this paragraph shall affect the validity of any such action taken.

(2) Paragraph (1) does not apply where the licensing authority is also the enforcing authority.

(3) In this article and article 43(1)(a)—

(a) "licensing authority" means the authority responsible for issuing the licence; and

(b) "licensing" includes certification and registration and "licence" is to be construed accordingly; and

(c) references to the issue of licences include references to their renewal, transfer or variation.

Article 42 Guidance Notes

This article provides that for licensing purposes, the enforcing authority must be given the opportunity to make representations under the Licensing Act 2003¹²⁸ before a license is issued. Where an enforcing authority takes enforcement action in premises to which a license relates, the enforcing authority should endeavour to notify the licensing authority of the action they intend to take. If the enforcing authority fails to do this; the enforcement action remains valid.

Article 42 FAQ

Q. Why is the term 'licensing of persons' used in this article?

¹²⁸ Licensing Act 2003, c. 17

A. Some licensing regimes (such as some for door supervisors or personal licences under the Licensing Act 2003) can impose safety requirements on individuals as well as, or instead of, on the premises. Such regimes can duplicate or conflict with management arrangements and responsibilities required under the Order.

Q. How does this article apply to certificates, registrations etc?

A. The article is equally applicable to certificates, registrations etc, as they are captured by virtue of article 42(3)(b).

Article 43—Suspension of terms and conditions of licences dealing with same matters as this Order

The Regulatory Reform (Fire Safety) Order 2005

Suspension of terms and conditions of licences dealing with same matters as this Order

43. —(1) *Subject to paragraph (3), paragraph (2) applies if—*

(a) an enactment provides for the licensing of premises in relation to which this Order applies, or the licensing of persons in respect of any such premises;

(b) a licence is issued in respect of the premises (whether before or after the coming into force of this Order); and

(c) the licensing authority is required or authorised to impose terms, conditions or restrictions in connection with the issue of the licences.

(2) At any time when this Order applies in relation to the premises, any term, condition or restriction imposed by the licensing authority has no effect in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under this Order.

(3) Paragraph (1) does not apply where the licensing authority is also the enforcing authority.

Article 43 Guidance Notes

Any condition contained in a license that deals with general fire precautions has no effect, because such matters are dealt with under the Order, which takes primacy for such matters.

No further interpretation or guidance can be provided at this time to supplement that given in Guidance Note 1¹²⁹.

Article 43 FAQ

Q. Can licensing authorities still impose conditions relating to fire for their own enforcement?

A. Licensing authorities may, subject to the terms of the licensing legislation concerned, include terms, conditions or restrictions in a licence. However, where the subject matter of the condition(s) relates to any matter covered by the Order

¹²⁹ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

(or which could be covered if regulations were made about it under article 24) then a licensing authority cannot enforce it and the licensee is not obliged to comply with it.

Q. Can the provisions of the Order be enforced in domestic accommodation above licensed premises?

A. This will depend on the terms of the leasing arrangements and whether the domestic accommodation is provided as part of the workplace e.g. for a pub manager. If the accommodation is deemed to be 'private' accommodation, the Order, with the exception of article 31(10), cannot generally be enforced. However, the escape route for the relevant persons from the domestic premises, if affected by the use of the licensed premises, can be addressed under the Order. Whenever the licensed premises and domestic premises co-exist in the same building, persons in the domestic premises can be protected by fire precautions and fire warning requirements in the licensed premises. These requirements must be the minimum required to ensure adequate means of escape to a place of safety as quickly and as safely as possible.

Article 44—Suspension of byelaws dealing with same matters as this Order

The Regulatory Reform (Fire Safety) Order 2005

Suspension of byelaws dealing with same matters as this Order

44. Where any enactment provides for the making of byelaws in relation to premises to which this Order applies, then, so long as this Order continues to apply to the premises, any byelaw has no effect in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under this Order.

Article 44 Guidance Notes

Any byelaws that deal with general fire precautions have no effect, because such matters are dealt with under the Order, which takes primacy for such matters.

No further interpretation or guidance can be provided at this time to supplement that given in Guidance Note 1¹³⁰.

Article 44 FAQ

No questions have been raised in relation to this article at this time.

¹³⁰ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

Article 45—Duty to consult enforcing authority before passing plans

The Regulatory Reform (Fire Safety) Order 2005

~~Duty to consult enforcing authority before passing plans~~

~~—45.—(1) Where it is proposed to erect a building, or to make any extension of or structural alteration to a building and, in connection with the proposals, plans are, in accordance with building regulations, deposited with a local authority, the local authority must, subject to paragraph (3), consult the enforcing authority before passing those plans.~~

~~—(2) Where it is proposed to change the use to which a building or part of a building is put and, in connection with that proposal, plans are, in accordance with building regulations, deposited with a local authority, the authority must, subject to paragraph (3), consult with the enforcing authority before passing the plans.~~

~~—(3) The duty to consult imposed by paragraphs (1) and (2)—~~

~~—(a) only applies in relation to buildings or parts of buildings to which this Order applies, or would apply following the erection, extension, structural alteration or change of use;~~

~~(b) does not apply where the local authority is also the enforcing authority.~~

Article 45 Guidance Notes

Article 45 has been omitted by an amendment made to the Order by paragraph 90 of Schedule 5 to the Building Safety Act 2022.

The duty to consult is maintained by Regulation 15A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023¹³¹).

The consultation in relation to fire safety does not apply in relation to higher-risk building work by virtue of the amendment made by regulation 4 of the Building Regulations etc. (Amendment) (England) Regulations 2023. The amendment disapplies certain procedural requirements of the Building Regulations 2010 in relation to higher-risk building work under a newly created regulation 2B.

A duty is imposed on the ‘regulator’ (Health and Safety Executive) under Section 15 of the Building Act 1984 (as amended by the Building Safety Act 2022, paragraph 18, Schedule 5) to consult the fire and rescue service before the ‘regulator’ exercises its powers to dispense with or relax building regulations in connection with—

- a) structural fire precautions,
- b) the provision of means of escape from buildings in case of fire, or

¹³¹ SI 2003 No. 911

- c) the provision of means for securing that such means of escape can be safely and effectively used at all material times

Article 45 FAQ

Q. Is it necessary, when dealing with Building Regulation consultations (planning applications) to sign 'non-disclosure of information' agreements in relation to any given premises under consideration through the statutory consultation process?

A. A similar question in relation to the non-disclosure of information obtained in the exercise of powers conferred on authorities was asked in the House of Lords by the Delegated Powers and Regulatory Reform Committee, as the Order made its ascent through the legal process. The answer given by the ODPM at that time is appropriate to answer this question. "The Data Protection Act 1998 and the Freedom of Information Act 2000 provide a comprehensive framework on the disclosure of information obtained in such circumstances."¹³²

¹³² GREAT BRITAIN. HOUSE OF LORDS Delegated Powers and Regulatory Reform Committee, *Proposal for the draft Regulatory Reform (Fire Safety) Order 2004*, 27th Report of Session 2003-04, HL 153, p 18, Q3

Article 46—Other consultation by authorities

The Regulatory Reform (Fire Safety) Order 2005

Other consultation by authorities

46. —(1) *Where a government department or other public authority intends to take any action in respect of premises which will or may result in changes to any of the measures required by or under this Order, that department or authority must consult the enforcing authority for the premises before taking that action.*

(2) *Without prejudice to any power of the court to cancel or modify a notice served by a government department or other authority, no failure on the part of the department or authority to consult under paragraph (1) invalidates the action taken.*

(3) *In paragraph (1), "public authority" includes an approved inspector within the meaning of section 49 of the Building Act 1984.*

Article 46 Guidance Notes

This article provides for consultation between other building control bodies such as approved inspectors and enforcing authorities in relation to premises to which the Order applies or, when the premises are completed, the Order will apply. It reinforces the position of respective Fire and Rescue Authorities as a statutory consultee under the Approved Inspectors Regulations.

No further interpretation or guidance can be provided at this time to supplement that given in Guidance Note 1¹³³.

Article 46 FAQ

No questions have been raised in relation to this article at this time.

¹³³ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, October 2007

Article 47—Disapplication of the Health and Safety at Work etc. Act 1974 in relation to general fire precautions

The Regulatory Reform (Fire Safety) Order 2005

Disapplication of the Health and Safety at Work etc. Act 1974 in relation to general fire precautions

47. —(1) *Subject to paragraph (2), the Health and Safety at Work etc. Act 1974 and any regulations made under that Act shall not apply to premises to which this Order applies, in so far as that Act or any regulations made under it relate to any matter in relation to which requirements are or could be imposed by or under this Order.*

(2) *Paragraph (1) does not apply—*

(a) where the enforcing authority is also the enforcing authority within the meaning of the Health and Safety at Work etc Act 1974;

(b) in relation to the Control of Major Accident Hazards Regulations 1999.

Article 47 Guidance Notes

This article principally gives the Order primacy over the Health and Safety etc Act 1974 for matters that could be satisfied through the application and enforcement of the Order. There are certain exceptions to this rule:

1. Where an enforcing authority is the enforcing authority for both pieces of legislation; then the enforcing authority may use the legislation that is most suitable in the circumstances of the case. For example, where a Fire and Rescue Authority is the enforcing authority for the purposes of licensing and enforcing explosives such as fireworks; then the Fire and Rescue Authority may use that legislation that most applies to the problem in hand. Equally the HSE may choose to apply the provisions of The Health and Safety at Work etc Act 1974 or the Management of Health and Safety at Work Regulations 1999 instead of the Order, where they are the enforcing authority for both enactments.
2. This article does not give primacy to the Order for matters relating to premises to which the Control of Major Accident Hazards Regulations 1999 (COMAH sites) apply¹³⁴; although it might be argued that the control of general fire precautions in premises to which those regulations apply amount to a requirement for process fire precautions to which the Order does not apply in any case.

This article disapplies the obligations in the HASAW and any regulations made under it to which the Order applies. In doing so, the article also disappplied the obligations in relation to workers' capabilities contained in the Management of Health and Safety at Work Regulations

¹³⁴ GREAT BRITAIN. Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note No. 1: Enforcement*, London, Department for Communities and Local Government, 2007, p36

1999, so far as they related to fire safety i.e., in connection with article 13(3)(b)—nominating competent persons to implement measures for fire-fighting in the premises, article 15(1)(b)—nominating competent persons to implement procedures to be followed in the event of fire, article 16(3)(b)—persons essential to for carrying out repairs and other necessary work, and article 18(8)—competent persons in the responsible person’s employment.

To restore those obligations, the Department for Communities and Local Government (at the time) needed to explicitly re-apply the regulation and did so through the coming in to force of the Fire Safety (Employees’ Capabilities) (England) Regulations 2010¹³⁵, which came into force on 6 April 2010.

Article 47 FAQ

Q. Please explain – what is disapplied?

A. The whole of the Health and Safety at Work etc. Act 1974 (HSWA), including the relevant statutory provisions (RSP) and regulations made under the Act is disapplied (i.e. it does not apply) insofar as the requirements of the Act relate to matters covered by the Order or which could be covered by regulations made under article 24 of the Order. The two main exceptions are where the enforcing authority for the Order and for HSWA is the same body; and where the premises are subject to the Control of Major Accident Hazards Regulations 1999. In addition, it is taken, by virtue of intent, that where health and safety regulations are amended to refer to the Order then those regulations are effectively part of the Order and are not disapplied insofar as they are needed to give effect to requirements of the Order, (e.g. in relation to consultation with employees legislation).

¹³⁵ S.I. 2010 No. 471, Fire Precautions, England The Fire Safety (Employees’ Capabilities) (England) Regulations 2010

Article 48—Service of notices etc.

The Regulatory Reform (Fire Safety) Order 2005

Service of notices etc.

48. —(1) Any notice required or authorised by or by virtue of this Order to be served on any person may be served on him either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(2) Any such notice may—

(a) in the case of a body corporate, be served on or given to the secretary or clerk of that body; and

(b) in the case of a partnership, be served on or given to a partner or a person having control or management of the partnership business.

(3) For the purposes of this article, and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this Order, the proper address of any person is his last known address, except that—

(a) in the case of a body corporate or their secretary or clerk, it is the address of the registered or principal office of that body;

(b) in the case of a partnership or person having control or the management of the partnership business, it is the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is their principal office within the United Kingdom.

(4) If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address as the one at which he or someone on his behalf will accept notices and other documents, that address is also to be treated for the purposes of this article and section 7 of the Interpretation Act 1978 as his proper address.

(5) Without prejudice to any other provision of this article, any such notice required or authorised to be served on or given to the responsible person in respect of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible individual who is or appears to be resident or employed in the premises.

(6) If the name or the address of the responsible person on whom any such notice is to be served cannot after reasonable inquiry be ascertained by the person seeking to serve it, the document may be served by addressing it to the person on whom it is to be served by the description of "responsible person" for the premises (describing them) to which the notice relates, and by delivering it to some responsible individual resident or appearing to be resident on the premises or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

(7) Any notice required or authorised to be given to or served on the responsible person or enforcing authority may be transmitted to that person or authority—

(a) by means of an electronic communications network (within the meaning given by section 32 of the Communications Act 2003); or

(b) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(8) Where the recipient of the transmission is the responsible person, the transmission has effect as a delivery of the notice to that person only if he has indicated to the enforcing authority on whose behalf the transmission is made his willingness to receive a notice transmitted in the form and manner used.

(9) An indication to an enforcing authority for the purposes of paragraph (8)—

(a) must be given to the authority in any manner it requires;

(b) may be a general indication or one that is limited to notices of a particular description;

(c) must state the address to be used and must be accompanied by any other information which the authority requires for the making of the transmission;

(d) may be modified or withdrawn at any time by a notice given to the authority in any manner it requires.

(10) Where the recipient of the transmission is the enforcing authority, the transmission has effect as a delivery of the notice only if the enforcing authority has indicated its willingness to receive a notice transmitted in the form and manner used.

(11) An indication for the purposes of paragraph (10)—

(a) may be given in any manner the enforcing authority thinks fit;

(b) may be a general indication or one that is limited to notices of a particular description;

(c) must state the address to be used and must be accompanied by any other information which the responsible person requires for the making of the transmission;

(d) may be modified or withdrawn at any time in any manner the enforcing authority thinks fit.

(12) If the making or receipt of the transmission has been recorded in the computer system of the enforcing authority, it must be presumed, unless the contrary is proved, that the transmission—

(a) was made to the person recorded in that system as receiving it;

(b) was made at the time recorded in that system as the time of delivery;

(c) contained the information recorded on that system in respect of it.

(13) For the purposes of this article—

"notice" includes any document or information; and

"transmission" means the transmission referred to in paragraph (7).

Article 48 Guidance Notes

This article deals with the means by which a notice may be served on a recipient. There are a range of means by which notices may be served.

It is expected that most notices will be sent by post to the necessary responsible person or duty holder and this is perfectly acceptable. Where notices are served by post, the notice should be addressed to the recipient's proper address. For most cases the proper address is the last known address of the recipient. Enforcing authorities should make every reasonable effort to ensure that notices are served on the correct person at the correct address. The address may be the recognised main business address or registered office.

A notice is deemed to be served¹³⁶ when it has been properly addressed, pre-paid and posted, with the relevant documents. The notice is deemed to have been affected¹³⁷ at a time when the letter would have been delivered in the normal course of postal delivery.

Intended recipients of notices are at liberty to nominate some alternative address providing that he indicates that he is willing to receive notices at this address, and for the purposes of this article, that other address is taken as being the recipient's proper address.

Article 48(6) identifies a situation in which, after making efforts to find the identity of the recipient and the proper address of the premises, that the serving of a notice may be affected by addressing the notice to the 'responsible person' for premises that are described in the best way possible and by delivering it to a person or by affixing it to some part of the premises in which the notice is likely to be found. Albeit that the Order allows for service of a notice in such a manner, the legal position of notices served in such a manner, is tenuous at best. Notices issued in such a manner are open to robust attack if the matter is ever taken to court and the position of the enforcing authority will be severely weakened.

The electronic service and effect of notices is permissible provided that the recipient has identified a willingness to receive the notice in this format and that the respective means of sending and receiving the notice are electronically compatible and will result in the recipient receiving a notice that is legible.

¹³⁶ 1978, Interpretation Act 1978 (chapter 30)

¹³⁷ Ibid

Article 48 FAQ

Q. How do enforcing authorities go about issuing notices on Private Limited Companies and Public Limited Companies – and what’s the difference between the two?

A. The Companies Act states that private limited companies do not have to appoint a company secretary, whereas Public Limited Companies must (by law) appoint a company secretary. Therefore, the notice will be issued on the body corporate in both cases but may be addressed to the company secretary only in the case of a Public Limited Company. For the addressee in the case of a Private Limited Company, efforts will have to be made to determine a person to which the notice should be addressed. Companies House or other appropriate search facility should be used to assist in this regard.

Article 49—Application to the Crown and to the Houses of Parliament

The Regulatory Reform (Fire Safety) Order 2005

Application to the Crown and to the Houses of Parliament

49. —(1) *Subject to paragraphs (2) to (4), this Order, except for articles 29, 30 and 32 to 36, binds the Crown.*

(2) *Articles 27 and 31 only bind the Crown in so far as they apply in relation to premises owned by the Crown but not occupied by it.*

(3) *For the purposes of this article—*

(a) the occupation of any premises by the Corporate Officer of the House of Lords for the purposes of that House, by the Corporate Officer of the House of Commons for the purpose of that House, or by those Corporate Officers acting jointly for the purposes of both Houses, is to be regarded as occupation by the Crown;

(b) any premises in which either or both of those Corporate Officers has or have an interest which is that of an owner are to be regarded as premises owned by the Crown; and

(c) in relation to premises specified in sub-paragraphs (a) and (b), the relevant Corporate Officer is the responsible person.

(4) *Nothing in this Order authorises the entry of any premises occupied by the Crown.*

(5) *Nothing in this Order authorises proceedings to be brought against Her Majesty in her private capacity, and this paragraph shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Order.*

Article 49 Guidance Notes

With the exception of certain articles, the Order applies to the Crown. The exceptions are predominantly that enforcement and alterations notices cannot be issued on the Crown. Prohibition notices may apply to the Crown. Articles 32-36 are excepted because (starting with article 32 – Offences) these articles would imply that the Crown can commit offences against itself, that the Crown can make and hear an appeal against itself in one of its courts, and that it can submit itself to the bringing of the matter to determination by the Secretary of State.

Those powers that may be brought to bear on the Crown by an enforcing authority (powers of entry and the issuing of a prohibition notice) may only be brought in cases where the premises in question are the property of the Crown but are not occupied by it. Various premises and circumstances of occupier are established at article 49(3) as being occupied or owned by the Crown.

In cases where premises are occupied by the Crown, there are no powers of entry.

The identification of the 'Crown status' of any given premises is not straightforward. Crown premises are far from a static list of addresses. The Crown status of any given premises must (typically) be determined on its merits. There are a range of tests which may be applied by government lawyers to reach a conclusion. A level of difficulty is experienced by the Crown Premises' Fire Safety Inspectorate, as well as by other enforcing authorities for which Crown premises are challenging. For example, a determination as to whether premises are Crown or not, some of the concepts to be determined are separation between premises, Crown occupation, terms of lease, the freehold owner, contract terms, payment of rackrent / entitlement to receive rackrent, among others. Then there are forms of premises such as historic royal palaces, crown estate / property portfolio (which changes on an almost daily basis), Dutch of Lancaster / property portfolio (subject to regular changes), and Royal Peculiars which all 'enjoy' Crown status. Premises in the property portfolio can be as diverse as shopping centres, farms, commercial premises and warehouses, etc.

Article 49 FAQ

Q. This seems to say there is little enforcement or offences against the crown. Is this correct?

A. At present the Crown is immune from prosecution under the Order. Non-Crown employers and occupiers who occupy Crown premises can have formal enforcement action (including prosecution) taken against them. This would be done by Fire Inspectors appointed by the Secretary of State. Because the Crown cannot be prosecuted, the alterations, enforcement and prohibition procedures are not currently legally applied. However, Fire Inspectors often issue "Crown notices" which are identical to usual notices other than that they note compliance is expected due to assurances given by the Secretary of State.

Article 50—Guidance

The Regulatory Reform (Fire Safety) Order 2005

Guidance

50. —(1) *The Secretary of State must ensure that such guidance, as he considers appropriate, is available to assist responsible persons in the discharge of the duties imposed by articles 8 to 22B and by regulations made under article 24.*

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

(a) *proof of any failure to comply with any applicable ~~risk based~~ guidance may be relied on as tending to establish that there was such a contravention, and*

(b) *proof of compliance with any applicable ~~risk based~~ guidance may be relied on as tending to establish that there was no such contravention.*

(2) *In relation to the duty in paragraph (1), the guidance may, from time to time, be revised.*

(2A) *Before revising or withdrawing any risk based guidance in relation to relevant buildings the Secretary of State must consult such persons as the Secretary of State considers appropriate.*

(3) *The Secretary of State shall be treated as having discharged his duty under paragraph (1) where—*

(a) *guidance has been made available before this article comes into force; and*

(b) *he considers that the guidance is appropriate for the purpose mentioned in paragraph (1).*

(4) *In this article—*

“relevant building” means a building in England containing two or more sets of domestic premises;

“risk based guidance” means guidance under paragraph (1) about how a person who is subject to the duties mentioned there in relation to more than one set of premises is to prioritise the discharge of those duties in respect of the different premises by reference to risk.

Article 50 Guidance Notes

This article simply holds the Secretary of State to have produced some guidance for the purpose of assisting responsible persons to comply with the requirements of the Order before the Order came into effect. This was essentially achieved by the publication of the various guidance documents, distinguished by premises types and aimed at responsible persons.

The coming into force of the Fire Safety Act 2021 amended the Order by inserting paragraphs (1A), (2A) and (4). Paragraph (4) interprets terms used in the previous paragraphs and tempers the extent to which the inserted paragraphs will affect premises regulated under the Order. Paragraph (1A) uses the term 'relevant building', which applies only to those buildings containing two or more sets of domestic premises. Whereas the guidance previously produced to satisfy article 50 (the various Fire Risk Assessment guides) might appear to be risk based, they are outside the scope of the inserted paragraphs because 'risk based guidance' is interpreted to mean guidance about how a responsible person or other duty holder (as the only persons against whom proceeding for alleged contraventions of articles 8 to 22 or of regulations made under article 24 can be started) is subject to the duties of the Order in more than one premises and how the discharge of those duties should be prioritised according to risk. The interpretation appears to refer to how responsible persons (and other duty holders) should comply with the requirements and prohibitions imposed by or under the Order in respect of more than one premises i.e., the fire safety management of multiple sites.

Paragraph (1A) suggests that where there is an alleged failure to comply with a requirement of the Order (in a building containing two or more sets of domestic premises), compliance with 'risk based' guidance tends to prove compliance and vice versa. This is similar to the 'special legal status' given to the Fire Risk Assessment guides.

Article 50 FAQ

- Q. What is the impact of the insertions made by the coming into force of the Fire Safety Act 2021 on the other provisions of the Order?**
- A. The insertions relate to particular premises types and to particular guidance from the Secretary of State. The insertions should aid better regulation in the premises to which they related by tending compliance if guidance is followed and by tending to non-compliance where guidance has not been followed. The provisions appear to support best practice.

Article 51—Application to visiting forces, etc.

The Regulatory Reform (Fire Safety) Order 2005

Application to visiting forces, etc.

51. —*This Order applies to a visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 only to the extent that it applies to the Crown.*

Article 51 Guidance Notes

This article aims to assist the understanding of the Defence Fire Service in relation to the extent of its obligations under the Order. Article 51 serves to instruct the Defence Fire Service that visiting forces are brought under the Order but only insofar as the Order binds the Crown and not further.

Article 51 FAQ

No questions have been raised in relation to this article at this time.

Article 52—Subordinate provisions

The Regulatory Reform (Fire Safety) Order 2005

Subordinate provisions

52. —(1) *For the purposes of section 4(3) of the Regulatory Reform Act 2001 (subordinate provisions) the following are designated as subordinate provisions—*

- (a) article 1(3);*
- (b) in article 2, the definition of "relevant local authority";*
- (c) article 9(6) and (7);*
- (d) in article 10, the reference to "Part 3 of Schedule 1";*
- (e) article 11(2);*
- (f) article 14(2);*
- (g) article 16(1)(a) to (d);*
- (h) article 16(4);*
- (i) article 18(6) and (7);*
- (j) article 25;*
- ~~*(k) article 45(3);¹³⁸*~~
- (l) article 49; and*
- (m) Schedule 1.*

(2) A subordinate provisions order made in relation to article 1(3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A subordinate provisions order made in relation to any of the provisions mentioned in article 52(1)(b) to (m) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

¹³⁸ Omitted by paragraph 90, Schedule 5 of the Building Safety Act 2023

Article 52 Guidance Notes

It should be well understood that the Order was produced under the umbrella legislation of the Regulatory Reform Act 2001 and that the Order represented the greatest and most wide-ranging use of that Act at that time.

Certain articles are designated as subordinate provisions. Being designated as subordinate provisions allows changes to those articles to progress through parliament more quickly and easily than would otherwise be the case (relatively speaking).

“Subordinate provisions are appropriate to minor ancillary or technical provisions ...”¹³⁹

As the Order progressed through the Order-making process, there was some debate relating to articles 9-22 and whether or not they should be designated as ‘subordinate provisions’. The proposal to designate all articles (9-22) as subordinate was over-turned and consequently only those articles listed at article 52 have been so designated and are intended to be limited to those articles (or parts thereof) that are *“technical or procedural”*¹⁴⁰ in nature.

A Subordinate Provisions Order was used¹⁴¹ to delay the coming into force date of the Order from 1st April 2006 to 1st October 2006. This provision of the Order was subject to amendment by order subject to ‘negative resolution’.

Those other articles listed at article 52 are subject to amendment by order subject to positive resolution. To make changes to subordinate provisions, those changes must be subject to further ‘Order-making’, hence ‘by order’. That order may be subject to either ‘positive’ or ‘negative’ resolution. The principal difference between a ‘positive’ and ‘negative’ resolution is that the former will not come into force unless positive action is taken by the House¹⁴² to accept it e.g. it must be voted ‘in’, whereas the latter will automatically come into force after a period of time, unless it is seen and debated to the contrary.

By way of illustration, the whole of article 14(2) has been designated as subordinate, which includes the provision of article 14(2)(e), which states:

“sliding or revolving doors must not be used for exits specifically intended as emergency exits;”

Should a sliding or revolving door be invented that is highly efficient in terms of evacuating people from premises in case of fire (perhaps more efficient than doors currently in use), then it would follow that responsible persons and building designers should be allowed to make full use of such a door. In this case article 14(2)(e) may be amended by order subject to positive resolution.

¹³⁹ The Stationery Office Limited, House of Commons Regulatory Reform Committee, Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006, Fourth Report of Session 2005-06, Report, together with formal minutes, 23rd March 2006

¹⁴⁰ House of Commons Regulatory Reform Committee, Draft Regulatory Reform (Fire Safety) Order 2005 Ninth Report of Session 2004-05, Op Cit, para.57-60

¹⁴¹ The Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006, SI 2006 No. 484

¹⁴² In practice the resolution for change must be approved by both Houses of Parliament (i.e. the House of Commons and the House of Lords).

Article 52 FAQ

No questions have been raised in relation to this article at this time.

Article 53—Repeals, revocations, amendments and transitional provisions

The Regulatory Reform (Fire Safety) Order 2005

Repeals, revocations, amendments and transitional provisions

53. —(1) *The enactments and instruments referred to in Schedules 2 and 3 are amended, repealed and revoked in accordance with those Schedules.*

(2) *The enactments and instruments specified in column 1 of Schedules 4 and 5 are repealed or revoked, as the case may be, to the extent specified in the corresponding entry in column 3.*

(3) *Any conditions imposed under section 20(2A) or (2C) of the London Building Acts (Amendment) Act 1939 before the date when this Order comes into force and which relate to maintenance, shall cease to have effect from that date*

Article 53 Guidance Notes

This article acts to make changes to previous legislation, which is a fundamental part of the Order being produced i.e. to simplify and rationalise fire safety law. By so removing (or amending as appropriate) previous legislation the number of burdens imposed on responsible persons would be reduced.

For any extant notices served under the Fire Precautions Act 1971 (As Amended), the Interpretation Act 1978 provides for continuity of legal proceedings and suits subordinate legislation.

It is also worthy of note that, in England, a number of Local Acts have been repealed by the Building (Repeal of Provisions of Local Acts) Regulations 2012¹⁴³. Fire and Rescue Authorities are advised to have regard to guidance issued by the Fire Sector Federation¹⁴⁴ so that a consistent approach can be delivered with regard to the removal of installations and fixed systems caused by the repeal of Local Acts.

Article 53 FAQ

No questions have been raised in relation to this article at this time.

¹⁴³ The Building (Repeal of Provisions of Local Acts) Regulations 2012, SI 2012, No. 3124

¹⁴⁴ Fire Sector Federation, *Repeal Of Local Enactments – Guidance*, [online] 2014, London, available from <<http://firesectorfederation.co.uk/update/resources/local-act-guidance-fsf-executive-approved.pdf>> [Accessed 2 December 2014]

Appendix 1

Application to residential premises Guidance to be reviewed in light of BSA amendments and revised guidance

This appendix sets out how the Order applies to different types of residential accommodation.

The Order does not apply to premises (or parts of premises) that are occupied as a private dwelling with exception of the extent detailed at article 31. Most cases of doubt arise where the premises potentially consist of more than one dwelling or where one dwelling is occupied by people who appear to have no family connection. Each case must be considered on its merits and according to the risk there present. Matters for consideration include:

- (a) Whether the extent of the individual units of domestic accommodation is sufficient to consider each unit to be a “dwelling” in its own right. A lack of toilets, washing facilities or cooking facilities in each unit may be generally disregarded for this purpose. A situation in which occupiers rely on the use of common facilities, such as common cooking facilities, lounges or “living rooms” and they regard the premises (i.e. their unit and the common facilities) as their dwelling, tends to suggest the individual unit is not a dwelling in its own right.
- (b) Whether the accommodation that comprises the “dwelling” can be regarded as “private”.

The following is provided as guidance on application for many common circumstances:

Houses, maisonettes, flats and bed-sits

Individual houses (family/single occupancy)

The Order does not apply to individual houses whether detached or terraced, which are in traditional format (individual bedrooms, kitchen, lounge etc) occupied by a single household as domestic dwellings.

Private Flats (including those over commercial premises)

Private flats (having fire separation and separate access and egress) provided on premises as living accommodation for the owner or manager is to be regarded as a single private dwelling and as such sits outside the scope of the Order. Where such separation is not provided, enforcing authorities should remember that the responsible person (with a trade, business or other undertaking) owes a duty to relevant persons (in the domestic premises) and should take such action as will best protect those relevant persons from fire. However, even where private staff accommodation is provided, article 31 may be applied to the whole premises including that occupied as private staff accommodation.

Implications of the Order as it applies to Flats

This section will discuss in particular the responsibilities relating to individual front doors of flats accessed from common areas. It is frequently the case that individual front doors belong

to the individual flat owners rather than the landlord / managing agent. Similar issues also arise in relation to fire alarms, fire detection and other warning / prevention devices within the flat itself¹⁴⁵. Of significant interest are those flats within a block that are under different ownerships.

The Order imposes obligations on the responsible person to take general fire precautions in respect of the common parts of a block of flats (but not the individual flats themselves). One of the principal obligations is to undertake an assessment of the risks from fire in respect of the common areas of the block. Preventive and protective measures should be taken as a consequence of this risk assessment. Statutory guidance relating to sleeping accommodation details these responsibilities under the Order.

The common parts of blocks of flats (e.g. halls, stairs, landings, lifts etc) are subject to the Order¹⁴⁶ but individual flats fall outside its scope (with the exception of Article 31(10)).

Where individual flat owners refuse to co-operate with the landlord / managing agent in relation to requirements under the Order e.g. the owner changed the front door to the flat to a non-fire door, and is unwilling to return it to a fire door in order to comply. Enforcing authorities may be in a position to assist. In this example, the flat owner has exercised control over a fire safety measure, which is used for the protection of the occupants of more than one dwelling i.e. the front door (by changing it from a fire resisting door to a door that is not fire resisting).

Duties are imposed (among others) on persons having, by virtue of any contract or tenancy, an obligation of any extent in relation to the safety of the premises. Where contracts or tenancy agreements give flat owners control over their front door and the front door constitutes a protective measure providing a degree of safety to fellow occupiers, that person could be treated as being a person who has control of the premises. In these circumstances the terms of the lease require careful consideration. The lease may contain appropriate provisions which could address problems without the need to enforce duties under the Order itself.

Parts of the flat which do not also form a part of the common areas fall outside the scope of the Order.

Where a flat owner has exercised control of his front door by installing a door of his choice (that may not be appropriately fire resistant), the flat owner may be viewed as a duty holder under article 5(3). Since the front door to the flat forms a part of the common areas (i.e. premises within the scope of the Order) the extension of the duty to every person who has to any extent control of the premises applies. Article 5(3) imposes a duty on those with control "so far as the requirements relate to matters within his control". The scope of the Order and the flat owners control typically extend only to the front door of the flat. The requirement relates to providing appropriate fire resistance that in the event of danger, other occupiers can evacuate quickly and safely via the common areas of the block. The occupiers' control of the door has been demonstrated already and the requirements relate to the flat owner only so far as the Order applies to his flat i.e. the front door. By virtue of taking the door into his control and (likely) by having an obligation in relation to the safety of the

¹⁴⁵ See the FSO Guidance Notes given at article 17 of this document.

¹⁴⁶ See Westminster City Council - v - Select Management

premises by virtue of his contract or tenancy, the owner is assuming duties under the Order. If duties are imposed, the owner is liable to the associated parts of the Order, not least a duty owed to relevant persons and a duty to cooperate and coordinate with other responsible persons who have duties in respect of the premises.

An enforcement notice can be served either on the responsible person or article 5(3) duty holder (as a person having to any extent, control of the premises). This extends to the flat owner (as an owner of the front door of the flat). It may be more palatable to enforcing authorities to enforce against the duty to cooperate and coordinate in the first instance, rather than enforcing the replacement of the front door, which might result in possible prosecution against private individuals.

Individual houses (shared)

The Order does not apply to traditional format (individual bedrooms, kitchen, lounge etc) houses (detached or terraced), which are occupied by a group of persons (e.g. a few students or friends) under a shared tenancy or individual tenancies under a head tenant. The use of locks on bedroom doors to provide a degree of privacy or security is irrelevant because the individual bedrooms are not considered to be separate dwellings. The whole premises consists a house occupied as a single private dwelling.

Individual flats, maisonettes and bed-sits (family / single occupancy)

Individual flats, maisonettes and bed-sits contained in purpose built or converted properties are not subject to the main provisions of the Order (articles 8 to 22). However, article 31(10) may be applied to the whole premises including those elements occupied as a private dwelling. The parts of the property that are, or may be, used by the occupants of more than one flat or bed-sit (e.g. common entrance hall, stairs, lift, corridors, gardens) are subject to the full provisions of the Order. Where the occupant of a flat or bed-sit may exercise control over a common fire precaution, such as parts of a fire alarm system that extends into the flat, or the fire resisting nature of the front door to the flat (which are provided to protect the common means of escape corridor), then the occupant may be regarded as having duties under the Order. These duties may be applied by virtue of article 5(4) if the terms of the contract or tenancy agreement so dictate, or by virtue of article 5(3) as a person with control over the premises (albeit that control is very limited). Predominantly this will relate to maintenance requirements under articles 17 and 38. The carrying on of maintenance falls to the responsible person but there is an expectation that the tenant will co-operate with him to ensure that common safety systems are adequately maintained.

Where a property contains common parts to which the Order applies and falls within the definition of a 'house in multiple occupation', under sections 254 to 259 of the Housing Act 2004, a prohibition notice served in accordance with article 31 of the Order may be applied to the whole premises, including those elements comprising the private dwellings.

Individual flats (including maisonettes) and bed-sits (shared)¹⁴⁷

The sharing of an individual flat or bed-sit is subject to the same considerations as the sharing of an individual house (see above). These properties (the individual flats etc.) are not subject to the Order other than as described for “Individual flats, maisonettes and bed-sits (family / single occupancy)” i.e. article 31(10) may be applied.

Party Houses

Party houses are, in general, large self-catered houses made available to families and large groups for rent or hire, typically for special occasions. Premises range from cottages to castles and are rented to groups (usually upwards of ten people, with no upper limit). When rented or hired to such groups the premises are occupied in the course of carrying on a trade, business or other undertaking (for profit or not). The premises are not being occupied as a single private dwelling and the Order applies. Party houses should have necessary and appropriate preventive and protective measures, when occupied in this way. When occupied by the owner, the premises consist of or are comprised in a house, which is occupied as a single private dwelling and the Order does not apply. Such accommodation has been subject to legal interpretation in a case heard in Mid and West Wales which involved an appeal against an enforcement notice. The District Judge presiding heard arguments from Counsel for the appellant and for the Fire and Rescue Service, and subsequently ruled that the premises in question did fall within the requirements of the Order. However, the District Judge did point out that the decision should not be regarded as laying down a rule that all holiday lets will necessarily fall within the scope of the Order, as proportionality will be the key to determining whether the circumstances surrounding individual holiday lets result in the application of the Order.

Student Halls of residence (further education)

Student’s study bedrooms within a University or University halls of residence are treated as individual dwellings. The Order is not considered to apply to them other than to maintenance requirements for common fire precautions that extend into the individual dwellings. The order applies in full to the common areas of such premises. Article 31 may be applied to the whole premises including those elements comprising private dwellings. The considerations for application described for flats are largely applicable though it should be noted that students will have little control over matters such as the replacement of room doors that protect the means of escape.

N.B. *Outside term-time, halls of residence are often used as conference accommodation or hotel accommodation for backpackers and other tourists among others. At these times, study bedrooms are available for rent in the same way as hotel rooms and the “private” element of the study bedroom ceases to have effect. The Order will apply in full to the whole property. Care should be taken, if some students still occupy parts of the premises, because their rooms remain as private dwellings while they remain in residence.*

¹⁴⁷ Changes to the areas applicable for sleeping accommodation were made in SI 2018 No. 616—The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018; applied in England only.

Workplace residences and Institutional-type premises

Nurses Homes

Accommodation for nurses and other medical staff in a dedicated accommodation unit are treated as individual dwellings. The Order does not apply to them other than to the extent it applies maintenance requirements for common fire precautions that extend into the individual dwellings. Article 31(10) may be applied to the whole premises including those elements comprised in private dwellings. The Order applies in full to common parts of the premises (stairs, corridors, lifts, lounges, kitchens etc. together with common fire precautions). The considerations applied to flats are applicable to these premises, although it should be noted that the residents of individual rooms or flats may have extremely limited control over any fire safety measures.

Hospitals

Patient areas, including wards and private rooms, in hospitals (whether public or private sector) are not private domestic dwellings and the Order applies. Where sleeping accommodation and other facilities are provided for staff (such as on-call doctors) it is not private domestic accommodation. The Order applies to the entire hospital.

Residential care homes

Although residents in care homes may have individual rooms, reliance is placed on use of facilities outside those rooms (lounges, dining rooms, gardens, terraces etc.) and residents tend to regard the home (and not their individual room) as their dwelling. Consequently, the whole care home should be regarded as one dwelling. Due to the nature of the premises and the way it is used, that dwelling is not “a single private dwelling”. The Order applies to the whole premises including residents’ rooms and the common areas together with areas used exclusively by staff. Sleeping accommodation provided for staff is not a dwelling.

Children’s Homes

Sleeping accommodation in children’s homes may comprise single rooms, shared rooms or dormitory style accommodation. In each case, reliance is placed on use of facilities outside those rooms (lounges, dining rooms, TV rooms, gardens, terraces etc.) and the whole home forms the dwelling. The individual sleeping accommodation (bedroom / dormitory) is not considered to form a private dwelling in its own right and as the home as a whole is used by various people it is not considered to form a single private dwelling. The Order applies to the whole premises including any sleeping accommodation used only by staff working night shifts. Where a flat or flats are provided as domestic dwellings for staff on a permanent or semi-permanent basis; the Order does not apply to the flats. However, even where private staff accommodation is provided, article 31 may be applied to the whole premises including that occupied as private staff accommodation.

Nursing Homes

Homes providing medical care (including hospices) may provide accommodation as single, shared or dormitory rooms. As with hospitals and residential care homes, accommodation for residents and sleeping / rest accommodation for staff on night shift does not constitute a private dwelling. The Order applies to the whole premises with the exception of any flat provided for a manager or owner who lives on the premises. However, even where private staff accommodation is provided, article 31 may be applied to the whole premises including that occupied as private staff accommodation.

Sheltered Housing

Accommodation may be provided as either flats or as separate houses. The common features of these types of accommodation are likely to include daily (or more frequent visits) to residents by a warden and / or arrangements for a warden to be summoned quickly if a resident is encountering difficulties. Residents of this type of accommodation may also have day carers or even 24-hour assistance by carers or nurses. These premises are treated as private dwellings. The Order does not apply to the dwellings but may apply to any common facilities and office accommodation where this is provided on site. The considerations for “Individual flats, maisonettes and bed-sits (family / single occupancy)” apply equally to blocks of flats and converted houses used as sheltered housing.

Boarding Schools

Accommodation for pupils may be in the form of single, shared or dormitory rooms. In each case, conditions or restrictions will apply to the use of the room and the pupils will have to occupy any part of the premises as required by the school. Teaching and other staff will have access to pupil’s rooms in the role as being ‘in loco parentis’. Consequently, pupil’s rooms are not regarded as being private dwellings. The boarding accommodation should be regarded as one non-private dwelling and the Order applies. However, flats or living accommodation occupied by staff as their residence is a single private dwelling and outside the scope of the Order. However, article 31 may be applied to the whole premises including parts occupied as private staff accommodation.

Supported and Assisted Living

The application of the Order to premises providing supported and assisted living has become a complex area for consideration. Supported and assisted living is a growth industry and is set to continue to grow, in light of an aging population and the various dependencies that come with old age. Changes in the sector have resulted in numerous and ever evolving approaches and types of premises and services to deal with the issues. The promotion of independence in later life further complicates fire safety in this sector.

In terms of the application of the Order, there are a number of considerations that should be ‘weighed and measured’ before a determination is made about whether or not the Order applies to the premises in question.

1. Where occupants of single private dwellings receive (regular) health care from the employees of external agencies, the Order does not apply to the single private dwelling because the principal use of the premises is as a single private dwelling, to which the Order does not apply.
2. In the Order the interpretation of “domestic premises” means premises occupied as a private dwelling (etc.)¹⁴⁸. It is important to note that the determination of ‘domestic’ is made according to how premises are occupied i.e. if premises are occupied as a private dwelling, they are a private dwelling; and the Order does not apply¹⁴⁹.
3. The Order requires premises (or persons) being subject to a licence etc. under an enactment to record specified information¹⁵⁰. Notwithstanding this requirement, cognisance should be taken of whether or not the Order applies to the premises in the first instance i.e. the requirement for a licence can be independent from the Order applying to the premises.
4. ‘Domiciliary Care Agency’ means an undertaking which consists of or involves the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance¹⁵¹.
5. If an establishment provides accommodation AND nursing or personal care, it must be registered under the Care Standards Act 2000. (The provider of the accommodation does not have to be the same as that providing the nursing or personal care)¹⁵². The term ‘licensing’ includes certification and registration and ‘licence’ is to be construed accordingly¹⁵³.
6. The occupants of premises or rooms within premises (who may be paying a rent) may not always have privacy (or a right of exclusion) e.g. cases in which nursing or other staff can access the premises or room and can do so when not invited. A further example is where the terms of a tenancy agreement allows the landlord (and / or employees) to enter premises or rooms to check on the occupant or the condition of the flat according to their own determination (rather than that of the tenant), whereas a normal tenancy agreement would usually only allow for an annual check (or entry by prior arrangement or in case of emergency).
7. Nursing care can be a pre-requisite for entitlement to occupy the premises or part thereof AND nursing staff can enter of right, using their own access key.
8. Under no circumstances can the Order apply to premises consisting of or comprised in a house which is occupied as a single private dwelling¹⁵⁴.

Using a common scenario for the type of premises under consideration, issues with associated comments are provided below to help provide some pragmatic clarity.

Issue: A problem area for many landlords dealing with extra care/ supported living is that the areas of responsibility under article 3 can be blurred. So, for instance a Responsible Social Landlord builds (satisfying the functional requirements of approved document B1 to the Building Regulations) a supported needs block. It requires 24/7 staffing by a competent support organisation.

¹⁴⁸ See the Order, article 2– Interpretation

¹⁴⁹ See the Order, article 6– Application to premises

¹⁵⁰ See the Order, article 42– Special provisions in respect of licenced etc. premises

¹⁵¹ Moore and others v Care Standards Tribunal and another; [2005] EWCA Civ 627, Court of Appeal, Civil division.

¹⁵² Ibid

¹⁵³ Op. cit. article 42

¹⁵⁴ See the Order, article 31(10) and articles 6 and 2.

Comment: (At this point, many of the fire safety requirements will be in place as a part of the 'build'. On occupation the organisation will have to undertake a fire risk assessment to identify the hazards and to put in place preventive measures and sufficient controls – mostly procedural and maintenance if the build was done properly and addressed the protective measures).

Issue: The residents are all given their own tenancy agreements so their rights to privacy are the same as any other RSL tenant.

Comment: (This causes a problem for fire officers because the moral part of them wants to see proper protections in place, but the law (Fire Safety Order) only extends, in all likelihood, to the common areas as already agreed).

Issue: The RSL collects the rent and puts in place contracts to ensure the building is maintained and fire systems are serviced.

Comment: (Here the maintenance contractor will have duties in accordance with Article 5(4) but the RSL will have to be able to show due diligence in the selection and appointment (including ongoing controls) of competent persons to undertake that work).

Issue: Weekly / monthly checks are normally delegated to support staff

Comment: (If employed by the RSL, then the staff should receive adequate information and training to enable them to undertake their duties and the RSL will be responsible for this).

Issue: The local authority determines who is going to live in the premises and appoints the support provider who is managing the building on a day to day basis

Comment: (Day-to-day management equates to control of the premises, so the provider will have a duty to see that the requirements of the Order are addressed – according to Article 5(3)).

Issue: It is possible (and happens) that the support provider is replaced sometimes at short notice if they are considered not to be meeting the terms of the contract

Comment: (Where this happens the Order would expect the LA to ensure that they provide the new provider with all the fire safety-related information they might need to see that the fire safety at the premises is adequately sustained / maintained).

Issue: Generally speaking – the RSL is on site very infrequently only to deal with tenancy problems; the council visits occasionally to oversee the support provider; and the support provider is in the building continually.

Comment: (The RSL builds the place, and builds safety into the building), (and provides the provider with relevant safety information to ensure that fire safety is adequately provided); (and is responsible for the day-to-day fire safety provisions – regular checks, procedures, provision of information and training for employees etc.).

Ultimately, we would follow the money / management – at some point someone will have to give authority for money / time to be spent on a particular function; they tend to be in control).

Issue: A simple table which goes beyond the hierarchy set out in article three would assist enforcement officers and those providing the housing/support activities.

Comment: (Article 3 may be a figurative ‘red herring’ insofar as the duties are set out at article 5 and any of the duty holders can be held liable for failures when and if things go wrong, from a fire safety point of view).

-End of common scenario, issues and comments-

The Order does not routinely apply to parts of premises occupied as a private dwelling. However, where the ‘right to exclude’ is lost, the right to privacy may also be lost and it may be interpreted that the Order applies to all parts of the premises because they are (potentially) used by persons other than the occupant of the dwelling.

The Order applies when supported living is provided within an institutional setting. Guidance relating to the standards of fire safety to be provided in premises to which the Order applies has been provided¹⁵⁵. It should be noted that this document pre-dates the Order and that it provides advice commensurate with acknowledging that such premises are a home to the residents and that the application of fire safety should maintain a homely, non-institutional environment.

¹⁵⁵ The Stationery Office, *Fire Precautions in housing providing NHS – Supported Living in the community - An Update of Health Technical Memorandum 88*, London, NHS Estates, 2001

Paid-for Accommodations

Hostels

The term “hostel” can be widely construed to cover a variety of accommodation types. These vary from hostels for the homeless to refuges for people who have suffered assault or abuse. Due to the imprecise nature of the term, inspecting officers will have to exercise professional judgement to determine the circumstances of each case. Residents may well regard their room or bed-sit as their dwelling even though they only occupy it on a temporary basis. Of key consideration will be whether the resident can rightly regard their occupation of the relevant accommodation as “private”. To a reasonable degree this will depend on the extent of the occupier’s right to exclusive possession of the accommodation.

In most cases there are restrictions imposed on occupiers relating to their: use of rooms; entitlement to any particular room; having to share rooms; and entitlement to exclusively possess a room. These restrictions tend to indicate that the units are not occupied as private dwellings and therefore the Order applies to the whole premises.

Flats or living accommodation solely occupied by “live-in” staff as their residence are treated as private dwellings and as such fall outside the scope of the Order. However, even where private staff accommodation is provided, article 31 may be applied to the whole premises including parts occupied as private staff accommodation.

Staffed hotels including bed and breakfast accommodation

Guest rooms and suites are not considered to be private dwellings. The Order is considered to apply to all guest accommodation and common facilities including those used by staff. Private flats provided for the owner or manager as their residence are considered to be outside the scope of the Order other than for the purposes of article 31. Sleeping accommodation provided for other staff may take the form of individual or shared rooms or dormitory type accommodation. In each case, the accommodation will be subject to control and restriction of use by the hotel management and staff may have to occupy any space as required by management. The Order applies to any such accommodation.

Un-staffed Hotels

Premises may include those which consist of letting rooms above another business and for which registration and access to keys is through that second business. For all or part of the time, the hotel accommodation may be un-staffed. The whole premises are subject to the Order.

Holiday camps

Residential accommodation for guests on holiday camps is as for any hotel room available to the public. The Order applies in full.

The Order does not apply to those tents or caravans owned and used by members of the public. They are the occupiers’ private dwellings. Tents or caravans hired from commercial companies are subject to the Order as for any other guest accommodation.

Staff accommodation in chalets, flats or caravans provided by a commercial undertaking as with staff accommodation in hotels, is subject to the Order in full.

Caravan Parks and Park Homes

The site (comprising the premises) is subject to the Order. However, caravans / park homes (including any private garden associated with them) which are owned or leased by individuals as a first or second home for their own use are private dwellings and as such fall outside the scope of the Order. Common facilities and caravans / park homes which are used for holiday letting purposes are considered to be within scope of the Order.

Appendix 2

Recording of Training and Maintenance under The Regulatory Reform (Fire Safety) Order 2005 **Guidance to be reviewed in light of BSA amendments and revised guidance**

Individual articles relating to specific fire prevention and protection measures (articles 8 to 22) do not explicitly contain requirements to record actions taken. The reason for this is that the recording requirements, which have application across articles 8 to 22 are contained in articles 9 and 11.

Article 9 requires the responsible person to record (where five or more people are employed, a licence is in force or an alterations notice requires it) the significant findings of the fire risk assessment and that they must keep the risk assessment up to date. Where a fire safety measure has been taken, or is proposed, the responsible person must record that as a significant finding. Once a proposed measure has been implemented (e.g. fire safety measures have been carried out), that will be a new or revised significant finding. The risk assessment must be updated to record the revised finding.

Article 11 of the Order requires the responsible person to make and give effect to appropriate arrangements for the “planning, organisation, control, monitoring and review of the preventative and protective measures”. The article further requires (where five or more people are employed, a licence is in force or an alterations notice requires it) that these arrangements must be recorded. Effective arrangements for monitoring and review will need to be reasonably informed by appropriate information. If not so supported, the arrangements are unlikely to be effective.

Some preventative and protective measures can be reasonably monitored by physical inspection (e.g. the presence of fire fighting equipment) but others cannot (e.g. whether the fire alarm has been maintained at appropriate frequency). Consequently, the management arrangements required by article 11 should include an appropriate mechanism for informing the responsible person about these types of issues so these preventative and protective measures can be monitored and reviewed.

Where it appears to an inspecting officer that:

- (a) Article 9 has not been complied with because the significant findings of the risk assessment are not up to date (implemented measures not recorded); and / or
- (b) Article 11 has not been complied with because the arrangements for planning, organisation, control, monitoring and review of the preventative and protective measures are not effective,

The authority may require the responsible person to update the significant findings of the risk assessment as appropriate and / or make arrangements for information necessary for the effective planning, organisation, control, monitoring and review of the preventative and protective measures to be provided. An enforcement notice may direct the responsible person (or other person with responsibilities) to take measures to remedy a failure to comply with the Order i.e. could specifically require information to be recorded relating to the arrangements that are in place for e.g. training that has been given or maintenance that has been carried out.

Appendix 3

Additional information (incorporating guidance for enforcing authorities) in relation to article 16—additional emergency measures in respect of dangerous substances

In relation to premises having dangerous substances, the responsible person must ensure, subject to the risk assessment, that:

- (a) information on emergency arrangements is available,
- (b) suitable warning and other communication systems are in place,
- (c) any necessary pre-explosion warning is given, and people withdraw,
- (d) escape facilities are provided and maintained,
- (e) information is provided to relevant accident and emergency services,
- (f) information is displayed at the premises, and
- (g) steps are taken to mitigate fires, restore the situation to normal and inform relevant persons.

The enforcing authority may need to establish some or all of the following:

- (a) What information is available for staff and emergency personnel?
- (b) Where is this information kept?
- (c) Are there additional emergency procedures in place in respect of dangerous substances?
- (d) What warning and communications systems are in place?
- (e) What measures are in place to allow only essential persons into the affected area?
- (f) What special PPE and equipment is available on site?

The responsible person is required to provide information on emergency arrangements to the emergency services to enable them to prepare their response to an incident. The responsible person is also required to display this information, unless the results of the risk assessment make this unnecessary.

In the event of fire, the responsible person must ensure that immediate steps are taken to mitigate the effects of the fire, restore the situation to normal¹⁵⁶, and inform relevant persons who may be affected. The responsible person must also ensure that only essential personnel are permitted in the affected area, and they are issued with protective equipment and clothing, and safety equipment. These obligations do not apply, however, where the risk assessment shows that the quantity of dangerous substances is such that the risk to relevant persons is only slight.

An accident, incident or emergency is any unplanned event which has the potential to cause harm and which may require the evacuation, escape or rescue of one or more people. This article requires responsible persons to assess the likelihood and scale or magnitude of the effects that may result from any foreseeable accident, incident, emergency or other event involving dangerous substances present at the workplace. On the basis of this assessment,

¹⁵⁶ 'Normal' in this context may be understood to mean the removal of the danger to persons

responsible persons should put in place appropriate emergency arrangements to safeguard people on their premises, mitigate the effects of any such event and restore the situation to normal.

The precautions to deal with accidents, incidents and emergencies are without prejudice to the precautions to be taken to eliminate and reduce risk as required by article 12. The possibility of such events is minimised by good plant design and layout, sound engineering and good operating practice, and proper instruction and training of personnel. However, despite these measures, accidents, incidents and emergencies can still occur and therefore appropriate procedures are required.

It is not expected that responsible persons will necessarily be able to achieve full mitigation of all foreseeable accidents, incidents and emergencies solely by their own means. Rather, it will typically be a combination of the workplace emergency arrangements and those of the emergency services that will provide overall, the safety of relevant persons. The fire service will in any case assume responsibility for tackling any fire upon their arrival, but they may also be able to assist in dealing with other non-fire emergencies such as released or spilled dangerous substances. The primary requirement for protecting relevant persons is to ensure that they are able to evacuate or be evacuated to a place of safety. The requirement to mitigate the effects of the accident, incident or emergency should have regard to this objective and to the need not to expose people to any unnecessary risks. In many cases evacuation of people to a safe place will be the correct course of action. Particular attention should be given in choosing the safe place to ensure that it will not be affected by the event should it escalate.

Responsible persons are expected to take reasonable steps to ensure that they have sufficient knowledge to properly carry out the risk assessment e.g. referring to appropriate sources of information including relevant guidance, trade-information and advice from manufacturers and suppliers. It is important for responsible persons to consult with their employees and representative bodies during the assessment process and when procedures are being created.

Responsible persons should also liaise as necessary with the relevant accident and emergency services on the assistance they can provide.

Slight risk

Responsible persons are not required to make additional emergency arrangements where they assess that there is only a 'slight risk' because of the quantity of each substance present and because the control measures they have put in place to fulfil the requirements of other safety or fire legislation are sufficient to control that risk. For example, in respect of fire, the normal emergency procedures, including escape routes and means of giving warning already provided in the workplace may be assessed to be sufficient.

Responsible persons must be satisfied that control measures will continue to be effective if an accident, incident or emergency occurs e.g. where an accompanying event such as an explosion is possible that might compromise an escape route, regard would need to be given to the alternative measures needed to ensure safe evacuation. This might include a specially strengthened escape route and / or refuge.

In order to decide whether the risk is slight, responsible persons should take into account:

- (a) the quantity of each dangerous substance;
- (b) the work activity involving that dangerous substance;
- (c) information from the risk assessment carried out under regulation 15(1);
- (d) the potential scale of any release;
- (e) interactions between substances; and
- (f) the effect of the measures taken under article 12 to reduce the risk.

Assessing the risks

Responsible persons should adopt a systematic approach for identifying potential accidents, incidents, emergencies or other events and consider how they can be detected when they have occurred (or are occurring). They also need to determine, for the various stages of the accident, incident or emergency, the appropriate intervention to both mitigate the consequences of the event and prevent its further escalation. The impact of an accident, incident or emergency can often be greatly reduced if prompt and correct action is taken as soon as the event occurs.

Responsible persons will need to determine the degree of intervention appropriate to the circumstances of the emergency. This could range from those with sophisticated response teams who have been specially trained and equipped to deal with emergencies to those who will undertake minimal intervention at the workplace, but predominantly rely on external emergency services.

Safety Drills

Depending on the findings of the risk assessment and measures already taken, responsible persons will also need to consider what additional safety drills may need to be developed and tested. The frequency of practicing any such drills will depend on a number of factors including;

- (a) the quantity of dangerous substances on site and the level of risk they present;
- (b) the size of the workplace and workforce; and
- (c) the success, or otherwise of previous tests.

Warning and Communication Systems

Warning and communication systems (including visual and audible alarms) should be provided to alert people to an actual or potential incident involving dangerous substances. The system should be appropriate to the level of risk presented by foreseeable accidents, incidents or emergencies and provide sufficient time and information to allow the necessary emergency actions to be carried out.

When considering what warning and communication systems will be appropriate, responsible persons should take into account:

- (a) the size of their workplace and workforce;

- (b) who needs to be alerted and why;
- (c) quantities of substances involved and the level and type of risk those substances present; and
- (d) the emergency actions to be taken in the event of an incident and the required response times for these.

The warning system should not require persons to remain in the affected area to give the alarm during an emergency. Examples of warning systems include:

- (a) a continuous or intermittent ringing bell;
- (b) a klaxon or hooter;
- (c) warning lights;
- (d) an intercom or public address system.

Warning systems are not necessarily restricted to signalling the need for withdrawal or evacuation of people who might be affected by the incident. They can also be provided to alert employees of an incident or emergency, so that they can take appropriate emergency action to contain or mitigate the incident.

Where there are multiple alarm systems in a work place, responsible persons should ensure that these are clearly distinguishable and that their employees have the necessary training and equipment to be able to safely and correctly carry out any actions required.

Responsible persons should ensure that any warning or communication system can be seen or heard in all parts of the workplace likely to be affected by the incident. Responsible persons should also have procedures in place to keep employees informed of situations as they develop and any actions that may be needed as a consequence.

Escape facilities

Responsible persons should ensure through the fire risk assessment that adequate escape facilities are provided to enable employees and any relevant persons to readily and safely reach a place of safety.

The presence of a dangerous substance can significantly enhance the speed at which a fire develops and also the amount of smoke and fumes evolved. When considering escape facilities responsible persons should consider the potential for explosions, rapid fire development and ingress of dangerous substances into escape routes which might compromise escape. Responsible persons should consider how these events may be prevented and / or mitigated in such circumstances, e.g. by appropriate design of the escape route and / or means of suppressing or containing the fire. Steps to mitigate the effects of an incident may include:

- (a) Evacuating people who may be affected (taking into account possible escalation of the incident) to a place of safety;
- (b) Isolating plant or equipment from where uncontrolled releases of a dangerous substance are occurring;
- (c) Removing dangerous substances that are under threat to a safe place;

- (d) Preventing the further spread of a spilt or leaking dangerous substance by the use of barriers, booms or absorbent materials;
- (e) Limiting the extent of any flammable vapour cloud arising from a release of the dangerous substance by, e.g. the use of water sprays and curtains, or applying fire-fighting foam over the surface of the spilt or leaking liquid materials;
- (f) Increasing natural or mechanical ventilation to dilute hazardous concentrations of dangerous substances arising from an incident;
- (g) Controlling potential ignition sources in non-hazardous areas that are now affected by an uncontrolled release of dangerous substance;
- (h) Protecting the vessels or plant containing the dangerous substance against the effects of fire by such means as water deluge systems, water monitors and passive fire protection coatings; and
- (i) Applying appropriate fire-fighting materials to a fire involving a dangerous substance.

Responsible persons must implement those measures necessary to achieve control or containment of an accident, incident or emergency in order to allow sufficient time for people to escape or be evacuated to a place of safety.

After an incident, responsible persons must assess whether any danger remains and implement necessary measures to make the situation safe. If there are any doubts, expert assistance should be sought e.g. from emergency services. Implementation of necessary measures should be achieved without exposing employees or others to unnecessary risk, although this needs to be balanced against the overall risk to people of doing nothing or taking only limited measures.

Restoring the Situation to Normal

Under article 16, measures to 'restore the situation to normal' following an incident are limited to those measures needed to achieve the normal level of safety for the premises. They do not include measures to re-build a plant or restore it to normal production or operation. Suitable measures could include:

- (a) Repair or decommissioning leaking or unsafe plant;
- (b) Safe recovery and clean up of spilt or leaked dangerous substances;
- (c) Making any damaged or unstable buildings safe;
- (d) Repair or replacement of any equipment, monitoring devices or alarms necessary for the safety of relevant persons or others present on the premises;
- (e) Neutralising or disposing of any unstable or dangerous substances resulting from an incident.

Persons Carrying Out Repairs and Other Necessary Work

Measures taken to deal with accidents, incidents and emergencies will need to be adaptable to deal with the specific situation. This will similarly be the case with the remedial action following the accident, incident or emergency. It is therefore imperative for responsible

persons to ensure that those of their employees expected to respond in the event of an accident, incident or emergency involving a dangerous substance have the necessary skills, expertise and training to carry out the functions expected of them. Additionally, suitable plant and equipment necessary to carry out these functions should be available and properly maintained for immediate use.

Equipment to be provided should include appropriate personal protective equipment (PPE) that is determined to be necessary to enable employees to safely carry out the emergency actions required. However, employees should not be exposed to unnecessary risk in carrying these actions into effect.

Unless the risk assessment indicates otherwise, responsible persons should also display the emergency procedures in a prominent position at key locations on the premises. Appropriate information on emergency arrangements should also be communicated to non-employees who may be affected.

Sufficient information on the nature of any foreseeable emergencies involving dangerous substances should be made available to the relevant accident and emergency services that are likely to be asked to deal with such incidents. As a minimum, responsible persons should contact the external emergency services and offer to make this information available. Responsible persons should also make this information available to any on-site emergency responders.

Information on the responsible persons' emergency arrangements will help the emergency services to prepare their own response procedures and precautionary measures to be followed in the event of an incident occurring at the workplace. If requested by the emergency services, responsible persons should be prepared to send the information to them and / or meet with their representatives to discuss the emergency procedures. It is also useful to provide details of the responsible persons designated contact who will advise the emergency services of the situation on their arrival at an emergency. Responsible persons should also keep the emergency services updated on significant changes, such as the quantities and nature of dangerous substances present.

Responsible persons will need to consider which external emergency services need to be aware of their emergency arrangements. External emergency services include the fire and rescue service, ambulance service and the police. In some cases, all may need to be informed. In some circumstances other emergency services may need to be included, for example the coastguard for offshore installations etc.

The information made available should include:

- (a) The identity, location and approximate quantities of dangerous substances;
- (b) The foreseeable types of accident, incident or emergency that could occur and the risks that may result;
- (c) Where such events could occur on site, consideration should be given to the effect they could have, other areas that may be affected (in case the event escalates) and the possible repercussions escalation may cause; and
- (d) The emergency arrangements drawn up by the responsible persons to deal with accidents, incidents and emergencies, the procedures prepared by the responsible

persons to deal with any such event, the warnings and other communication systems, and escape facilities.

In addition to external emergency services, responsible persons should also make this information available to any on-site emergency services.

Appendix 4

Additional information relating to the interpretation of ‘relevant persons’

Special attention should be given to the term “... *in the immediate vicinity of the premises ...*” which seems unrelated to ‘general fire precautions’, because by definition it relates to ‘premises’.

The meaning of what constitutes ‘the immediate vicinity’ must be determined. In its broadest meaning, the term could be argued to include e.g. the 2000 people evacuated from their homes during the Buncefield explosion and fire and those affected by smoke from that fire up to 40 miles away¹⁵⁷.

It is not believed that the scope of ‘vicinity’ is intended to be this broad. A narrower definition should be adopted. It should also be noted that a ‘risk from smoke’ is not believed to be equivalent to a ‘risk from fire’.

The narrower interpretation extends (among limited others) to those areas of a workplace that by definition are beyond the premises i.e. roads used as a means of access to or egress from the place of work or otherwise used in connection with that place of work.

Where direct harm to relevant persons in the vicinity of premises may result from a fire on the premises, it is reasonable to expect that harm to be mitigated in some way. For example, a building designed to vent fire from external windows by ensuring that windows fail early in the development of the fire can be reasonably expected to result in a projectile hazard to passers-by. A further example may be a residential building with a ‘stay put policy’ in which each relevant person has a duty of care to all other relevant persons insofar as having control over the fire resistance of his front door, so that the fire does not spread unexpectedly quickly. ‘Risk from fire and from the effects of fire’ is appropriate while those effects are in the premises, since persons cannot be safe when threatened by fire or any harm derived from fire.

“The Department has stated that the draft Order requires the responsible person to consider the risks to persons from fire “in and around any place for which they have responsibility.” It considered that the requirement to provide a means of escape to a place of safety could not be construed as providing a means of escape to any area in the vicinity of premises where relevant persons would still be at risk in case of fire.”¹⁵⁸

¹⁵⁷ (11 December 2005), *Massive fire at Buncefield oil depot*, [online], <http://news.bbc.co.uk/onthisday/hi/dates/stories/december/11/newsid_4972000/4972524.stm> [Accessed 25 November 2014]

¹⁵⁸ House of Commons Regulatory Reform Committee, *Proposal for the Regulatory Reform (Fire Safety) Order 2004, Eleventh Report of Session 2003-04, Report, together with formal minutes, written and oral evidence, HC 684*, [online], 2004, London, House of Commons, Available from: <<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmdereg/684/68402.htm>> [Accessed 25 November 2014], EV33, Para 86

Case law has determined¹⁵⁹ that the occupier can be held liable for a fire on the premises which spreads to some other premises. Further cases seem to indicate that a duty is owed for direct fire spread through some means, whether by direct burning¹⁶⁰ or by the flight of burning embers¹⁶¹.

Relevant persons may form a part of a multiple occupied building, commercial, residential or other. In such circumstances the relevant person, including ‘any person in the immediate vicinity of the premises ...’ has clearer meaning, since the immediate vicinity of the premises will be within the same building. In the case of residential multiple occupied buildings, the duty owed by the responsible person extends to all relevant persons on the premises, despite the fact that individual parts of the premises may fall beyond the scope of the Order.

A case brought through the Scottish courts under the Health and Safety at Work etc. Act 1974 may set persuasive precedent¹⁶² for risk to relevant persons from smoke. The case held that duties imposed under the aforementioned Act extended to include persons beyond the premises:

“Counsel for the appellants eventually conceded that the section [Section 3(1) Health and Safety at Work etc. Act 1974] could cover persons outside of the place where the employer conducted his undertaking. For example, if the undertaking were conducted in such a way that dangerous fumes escaped and endangered members of the public passing by, it would be open to the court to hold that the employer had been in breach of his duty under s. 3(1).”

This case may hold persuasive precedent for English courts in a case for an escape of fire and smoke causing harm to persons beyond the premises. It may also be noted that this case was held at a time before the Management of Health and Safety at Work Regulations and before the philosophy of risk assessment had been embraced.

However, this case involved known chemicals with known properties, used under controllable conditions and it may be counter-argued that an accidental outbreak of fire is not controllable to the same extent, thereby diluting the accountability imposed on the responsible person.

¹⁵⁹ See *H & N Emanuel Ltd v Greater London Council and another* [1971] 2 All ER 835. The case deals with deliberate ignition and subsequent fire spread.

¹⁶⁰ *Johnson (trading as Johnson Butchers) v BJW Property Developments Ltd*, 86 Con. L.R. 74

¹⁶¹ *H & N Emanuel v Greater London Council*, Op Cit

¹⁶² *Sterling-Winthrop Group Ltd v Allan*, 1987 S.L.T. 652

Appendix 5

Regulations Made Under Article 24 of the Regulatory Reform (Fire Safety) Order 2005—A Completely Unofficial Guide

Appendix 5 follows of the format of the main guidance i.e., reproduces the Regulation under each set of Regulations and provides guidance and is followed with FAQs where appropriate, but brings together the various Regulations made under article 24 of the Order.

List of regulations made

Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Fire Safety (Employees' Capabilities) (England) Regulations 2010

Fire Safety (England) Regulations 2022

Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

2009 No. 782

Came into force on 1st October 2009

Regulation 1—Citation and commencement

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Citation, commencement, extent and application

1.—*These Regulations may be cited as the Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009 and shall come into force on 1st October 2009.*

Regulation 1—Guidance Notes

These Regulations are made in exercise of the powers conferred by article 24 of the Regulatory Reform (Fire Safety) Order 2005.

The rest of the guidance notes relating to these regulations are copied out from 'Regulatory Reform (Fire Safety) Order 2005 Guidance Note 3: Fire safety on sub-surface railway stations'¹⁶³. The guidance notes here should not be read as a substitute for those in Guidance Note 3. The copying out here is for convenience only.

Reference is made to the following in Guidance Note 3: Fire safety on sub-surface railway stations:

OR and NR: OR stands for Old Regulation(s) and refers to those regulations which have been deleted and their provisions included in the FSO Guide. NR stands for New Regulation(s) and refers to those regulations retained from the 1989 Regulations and which have been suitably updated for 2009.

FSO Guide: This is shorthand for the Technical Risk Assessment Guide on Transport Premises and Facilities, published under the Order.

AD – B Approved Document B – Fire Safety – Volume 2 – Buildings other than dwelling houses: This is the guidance published by Communities and Local Government on how to satisfy the Building Regulations with respect to fire. It

¹⁶³ Department for Communities and Local Government, *Regulatory Reform (Fire Safety) Order 2005 Guidance Note 3: Fire safety on sub-surface railway stations*, [online], 2009, London: CLG Available from

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15114/subsurfacerailsafety.pdf> Accessed 18 July 2022

contains details of the fire performance for the materials and construction of the building.

Regulation 1—FAQ

Q. Why were these Regulations introduced?

- A. These Regulations were introduced to address concerns raised by the Select Committee on Regulatory Reform (9th Report), during 2004-05, that the risk-assessment-based regime provided under the Order might not be suitable for the particular circumstances of sub-surface railway stations. The previous Fire Precautions (Sub-surface Railway Stations) Regulations 1989 were brought into force as a result of the Fennell report into the tragic King's Cross Underground fire in 1987, which at the time, applied in four fire and rescue authority areas: London, Merseyside, Tyne and Wear and West Midlands.

The department responded by conducting a review of the 1989 regulations to take account of the Order. The purpose of the review was to ensure that the same level of fire safety was maintained. The review was undertaken in partnership with trade union representatives, train operators and enforcing authorities. The department determined that a number of provisions in the 1989 regulations were adequately covered by the Order but that some were not. The Government's response (published in December 2008¹⁶⁴) confirmed that the 1989 regulations would be revoked and remade to take account of the Order.

Q. Was guidance produced to support the introduction of these Regulations?

- A. In short, Yes.

During the passage of the Order through Parliament, Ministers agreed to retain the 1989 Regulations and agreed to provide detailed guidance applicable to all transport premises before considering exercising powers to revoke the 1989 Regulations at a later date. This guidance was the, Fire Safety Risk Assessment: transport premises and facilities guidance.

¹⁶⁴ Communities and Local Government, *Explanatory Memorandum to the Fire Precautions (Sub-surface railway stations) (England) Regulations 2009*, [online], 2009, London: CLG Available from <https://www.legislation.gov.uk/ukxi/2009/782/pdfs/uksiem_20090782_en.pdf> Accessed 18 July 2022

A small working party concluded that the Order provided a similar level of protection to the 1989 Regulations for 26 of the individual provisions. However, there were 23 individual provisions where the working party considered that there was no comparable requirement in the Order.

The Regulatory Reform (Fire Safety) Order: Guidance Note 3: Fire safety on sub-surface railway stations¹⁶⁵ was produced to further support the implementation of the regulations and was issued under article 26(2) of the Order.

¹⁶⁵ Op Cit Guidance Note 3

Regulation 2—Interpretation

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Interpretation

2.— *In these Regulations*

“basic instruction” means instruction in the fire precautions to be taken or observed in the station premises, so far as those precautions relate to the member of staff’s duties, and includes instruction as to—

(a) the means of escape from the premises in case of fire;

(b) the action to be taken in case of fire in the premises;

(c) the location of, and method of operating, equipment provided in the premises for fighting fire; and

(d) the location and use of the means for giving warning in case of fire in the premises;

“fire-fighter” means a fire-fighter employed by a fire and rescue authority;

“member of staff” means a person employed to work in station premises as a member of the staff of the station premises;

“public area” means a part of station premises to which members of the public have access;

“station manager” means the member of staff who is for the time being in charge of station premises; and

“station premises” means premises to which these Regulations apply.

Regulation 2—Guidance Notes

“This article “Interpretations” contains a list of definitions. These have been updated in the 2009 Regulations to reflect current thinking, usage and reference in other more recent documents and legislation. They are also included here as they are used in further on in the 2009 Regulations.

- *The provision of ‘basic instruction’ is a new term relating to instruction that members of staff are required to have. There is no substantive change from the 1989 Regulations set out in OR9 (1)*

- *“firefighter” is now the accepted and currently used term for a member of a fire and rescue service who undertakes fire fighting activities and it is used in the 2009 Regulations*
- *“member of staff” refers to those people who work in station premises as a member of the station staff. Note that this differentiates them from people who may work in a sub-surface railway station, but who are not members of staff e.g. contractors, shop workers, newspaper vendors, staff working in catering outlets etc*
- *“Public area”–No further explanation required*
- *“Station Manager”– Under the Order the “responsible person” is responsible for compliance with the Order, in a workplace the employer is the “responsible person” and must appoint “competent persons” to assist in undertaking the preventative and protective measures (including operation of the emergency plan). In respect of the day to day safety management of a station the station manager should be an appointed competent person*
- *“Station premises”– This definition relates to the physical areas which are covered by the 2009 Regulations. Where a station connects with another adjacent area (e.g. a shopping centre, office building or another station) the physical extent of the station premises would need to be agreed with the relevant authority. In deciding the extent of the station premises, account should be taken of the relevant fire precautions (e.g. fire resisting construction or smoke control) to separate the ‘enclosed underground’ platform(s) from the adjacent area. In addition, the 2009 Regulations are expected to apply to all escape routes from the ‘enclosed underground’ platform(s). The station premises would include all public and staff areas within the station, including the track adjacent to the platforms, but does not extend to the adjacent tunnel or running track beyond the length of the platforms”¹⁶⁶*

N.B: OR stands for Old Regulation(s) and refers to those regulations which have been deleted and their provisions included in the FSO Guide. NR stands for New Regulation(s) and refers to those regulations retained from the 1989 Regulations and which have been suitably updated for 2009.

Regulation 2—FAQ

No FAQ yet

¹⁶⁶ Op Cit, Guidance Note 3, Section 2.2, page 8

Regulation 3—Application of Regulations

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Application of Regulations

3.—(1) *These Regulations apply to any premises where—*

- (a) the premises are used as a railway station;*
- (b) members of the public have access to the premises (whether on payment or otherwise); and*
- (c) there is a railway platform in the premises which is an enclosed underground platform.*

(2) A railway platform is an enclosed platform if the platform and the permanent way to which it is adjacent are situated wholly or mainly in a tunnel or wholly or mainly within or under any building.

(3) A railway platform is an underground platform if the level of the roof or ceiling immediately above the platform and the permanent way to which it is adjacent is below the level of the surface of the ground adjacent to any exit from the railway station providing a means of escape from the station in case of fire.

(4) A railway platform is situated mainly in a tunnel or mainly within or under a building if the platform and the permanent way to which it is adjacent are covered by any part of a tunnel or building for more than half the length of the platform.

(5) These Regulations apply to premises owned or occupied by the Crown.

Regulation 3—Guidance Notes

“This provision describes where the 2009 Regulations apply. In effect they apply to all railway stations to which members of the public have access, if there is at least one “enclosed underground platform”. There is no substantive change from the 1989 Regulations set out in OR3 (1).

The definition of an “enclosed underground platform” is a platform which is both “enclosed” and “underground”.

Each platform should be assessed separately and if any one platform is both “enclosed” and “underground”, the entire station premises will come within the remit of the 2009 Regulations.

A **platform** (in the context of the 2009 Regulations) is defined as:

- An **enclosed platform** if the platform and the track are: – Fully or partially in a tunnel; or,
– Fully or mainly within or under a building.
- An **underground platform** if the roof or ceiling immediately above the platform and the track are below the ground level of any fire exit
- Being in a tunnel or within or under a building if more than half the length of the platform and adjacent track are covered by a tunnel or building

The 2009 Regulations apply to Crown owned or occupied property complying with paragraph 1) above.”¹⁶⁷

N.B: OR stands for Old Regulation(s) and refers to those regulations which have been deleted and their provisions included in the FSO Guide. NR stands for New Regulation(s) and refers to those regulations retained from the 1989 Regulations and which have been suitably updated for 2009.

Regulation 3—FAQ

Q. What is the meaning of permanent way?

A. Permanent way is another (more technical term) for railway track. The term refers to the elements of railway lines: generally, the pairs of rails, typically laid on the sleepers or ties embedded in ballast intended to carry trains on a railway.

¹⁶⁷ Op Cit, Guidance Note 3, Section 2.3, page 9

Regulation 4—Doors to be kept locked

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Doors to be kept locked

4.—(1) Paragraph (2) applies to any passage or other area affording a means of escape from station premises in case of fire or giving access to such a means of escape.

(2) Every door which does not form part of, or give access to, the means of escape must be kept locked at all times when the part of the premises to which the door gives access is neither in use by any person who is at work in the premises nor available for use by members of the public.

Regulation 4—Guidance Notes

“This provision states that if certain areas are unoccupied and not open to the public, doors from those areas that face into escape routes should be kept locked. This is a requirement which is additional to the requirements for means of escape as covered in the FSO Guide and is in place in order to provide additional confidence in the integrity of the escape routes.”¹⁶⁸

N.B. FSO Guide is shorthand for the Technical Risk Assessment Guide on Transport Premises and Facilities, published under the Order.

Regulation 4—FAQ

- Q. Isn't this requirement (and others in these regulations) quite prescriptive in nature, and isn't that contrary to the risk assessment approach otherwise used in the Order?**
- A. The 2009 Regulations are prescriptive and set out additional measures that must be taken or put in place to ensure compliance. However, they do not replace anything that should be done under the Order, but are additional to those legal obligations.

¹⁶⁸ Op Cit Guidance Note 3, section 2.4, page 10

Regulation 5—Means for fighting fire

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Means for fighting fire

5.—(1) Paragraph (2) applies to these parts of station premises—

(a) a room containing any electricity generator, transformer or switchgear, other than one in which any machinery for operating an escalator, passenger conveyor or lift is installed;

(b) any storage area, including an area set aside for storing refuse pending its disposal; and

(c) any part of the premises used as a shop.

(2) The parts to which this paragraph applies must be provided with a means for fighting fire comprising a system which is activated automatically in that part of the premises in case of fire in that part.

(3) When any member of staff reasonably suspects that there is an outbreak of fire in the premises, immediate steps must be taken to activate the warning system referred to in regulation 6(3) and call for the assistance of the fire and rescue authority.

(4) A plan of the station premises suitable for use by fire-fighters when attending the premises for fire-fighting purposes must be kept in a part of the premises where it is accessible to fire-fighters.

(5) In this Regulation “passenger conveyor” includes any mechanically operated moving footway other than an escalator.

Regulation 5—Guidance Notes

“An automatic fire fighting system must be fitted to all storage rooms, shops, or any rooms containing electrical generators, transformer or switchgear. The type of suppression system should be appropriate for the type of risk within the room that it is covering.

Procedures and training should be in place to ensure that if a member of staff suspects that fire has broken out, he/she will activate the fire alarm system and that the fire and rescue service will be called.

The station manager should ensure that relevant information that fire fighters might need to assist them in dealing with a fire incident is kept in a location where the fire fighters can easily access it. The information that will be required should be agreed with the relevant fire and rescue authority, but will include plans of the station layout.

The fire and rescue authority may grant an exemption to the requirement to fit an automatic fire fighting system (NR5 (2) if it is provided with sufficient evidence that meets the criteria for an exemption see NR11 (1).

“Passenger conveyor” is used in preference to “travolator”, which is believed to be a registered trademark. Passenger conveyors have specific fire safety considerations (similar to escalators) and consequently require specific reference.”¹⁶⁹

N.B: OR stands for Old Regulation(s) and refers to those regulations which have been deleted and their provisions included in the FSO Guide. NR stands for New Regulation(s) and refers to those regulations retained from the 1989 Regulations and which have been suitably updated for 2009.

N.B. FSO Guide is shorthand for the Technical Risk Assessment Guide on Transport Premises and Facilities, published under the Order.

Regulation 5—FAQ

No FAQ yet

¹⁶⁹ Op Cit Guidance Note 3, Section 2.5, page 11

Regulation 6—Means for detecting fire and giving warning in case of fire

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Means for detecting fire and giving warning in case of fire

6.—(1) Paragraph (2) applies to these parts of station premises—

(a) those referred to in regulation 5(1);

(b) any office which is not separated from other parts of the premises by fire-resisting construction; and

(c) any staff room for persons employed to work in the premises.

(2) The parts to which this paragraph applies must be provided with a means for detecting fire which is activated automatically in case of fire in that part.

(3) The station premises must be provided with an electrically operated system for giving warning in case of fire.

(4) The system referred to in paragraph (3) must—

(a) be designed to transmit a warning to a place where it can be received by the station manager or by some other member of staff; and

(b) be capable of being activated both by manual operation at call points in the premises, including call points for use by members of the public, and by the means referred to in paragraph (2) for detecting fire in the premises.

(5) The station premises must be provided with a public address system for use by or on behalf of the occupier of the premises to give warning of fire to members of the public in the premises and advise them of the action to be taken in case of fire.

(6) Arrangements must be made to secure that in case of fire the station manager and any member of staff who is on duty in any part of the station premises can communicate with each other by personal radio or by telephone.

Regulation 6—Guidance Notes

“An automatic fire detection system must be fitted to all:

- Storage rooms including any rooms that may be used for storing refuse pending its disposal

- shops
- rooms containing electrical generators, transformers or switchgear
- offices (unless they are separated from other parts of the premises by fire resisting construction)
- staffrooms

The fire detection system should be connected to a fire alarm panel, located in a place where a member of staff can acknowledge the signal. The system should also include manual call points throughout the station.

The fire alarm system should give warning of fire via either a public address or a public address/voice alarm system. The voice messages should be chosen to ensure that the relevant instructions are provided to public and staff, depending on the nature of the incident.

In practice, a fire alarm system designed to BS 5839-1 and BS 5839-8 with automatic detection in the relevant areas should be able to achieve these criteria, although lower standards may be acceptable for older systems designed to earlier standards, as long as they meet the criteria above.

It should be noted that to comply with BS 5839-1, the evacuation signal should be given within three seconds of activation of any manual call point. However, it is common practice in railway stations in the UK to design fire alarm systems so that activation of a manual call point in the public areas initiates an investigation by staff (usually with a coded message over the PA system) rather than immediate evacuation. The investigation would usually have a specific time limit (which should be agreed with the fire and rescue authority) which, if exceeded, would result in evacuation of the station. Activation of a manual call point within staff areas would normally initiate immediate evacuation of the station (i.e. no initial investigation).

The station manager and all members of staff on duty must have a means of communicating with each other in the event of fire by e.g. personal radio or telephone.

The fire and rescue authority may grant an exemption from the requirement for automatic detection (NR6 (2) if it is provided with sufficient evidence that meets the criteria for an exemption see NR11 (1)).”¹⁷⁰

N.B: OR stands for Old Regulation(s) and refers to those regulations which have been deleted and their provisions included in the FSO Guide. NR stands for New Regulation(s) and refers to those regulations retained from the 1989 Regulations and which have been suitably updated for 2009.

N.B. FSO Guide is shorthand for the Technical Risk Assessment Guide on Transport Premises and Facilities, published under the Order.

¹⁷⁰ Op Cit Guidance Note 3, Section 2.6, page 12

Regulation 6—FAQ

No FAQ yet

Regulation 7—Combustible matter

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Combustible matter

7.—(1) *All parts of station premises must be kept clear of any accumulation of combustible refuse or other combustible matter.*

(2) *Any area set aside for storing combustible refuse in station premises pending its disposal must be separated from other parts of the premises by fire-resisting construction.*

Regulation 7—Guidance Notes

“Refuse and other combustible materials should only be stored in locations that are specifically designed for that purpose. These areas should be fire separated from the rest of the station by one hour fire resisting construction, in addition to the requirements of other parts of the 2009 Regulations.”¹⁷¹

Regulation 7—FAQ

No FAQ yet

¹⁷¹ Op Cit Guidance Note 3, Section 2.7, page 14

Regulation 8—Materials used in internal construction of premises

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Materials used in internal construction of premises

8.—(1) Any material which is used in the construction of an internal wall or ceiling in any public area must be of limited combustibility.

(2) To inhibit the spread of fire within the premises, any material which is applied to the surface of an internal wall or ceiling in any public area must—

(a) adequately resist the spread of flame over the surface; and

(b) have, if ignited, either a rate of heat release or a rate of fire growth, which is reasonable in the circumstances.

Regulation 8—Guidance Notes

Re: regulation 8.—(1) “This provision refers to the materials used in the construction of an internal wall or ceiling e.g. the studs and boards in a calcium silicate board partition, or the grid and tiles of a suspended ceiling. It does not apply to any material applied to the surface of such a wall or ceiling e.g. the wall covering on a partition or the paint on a ceiling tile which is covered under 2009 Regulation 8(2) (a) and (b) below.

Applicability to existing premises

a) Materials installed before 18.09.89 are not subject to the 1989 Regulations because they were not in force.

b) Materials installed from 18.09.89 to 01.10.09. are subject to the 1989 Regulations. Where materials were installed in this period in breach of the 1989 Regulations, it will be possible to enforce this breach even though the 1989 Regulations are revoked.

c) Materials installed on or after 1 October 2009 are subject to the 2009 Regulations.

Discussion

The 2009 Regulation specifies that the materials must be of limited combustibility so that if a fire develops, they will contribute only a limited amount of heat to it. Under AD-B, this requirement is only used in a limited number of areas such as the construction of escape stairs, junctions of roofs with walls, roofs surrounding roof lights and cavity barriers.

The 2009 Regulation applies the requirements to all materials used in the construction of internal walls or ceilings. These materials would not normally have such a high performance specified. However, it was felt that there needed to be a much higher level of fire safety in high risk areas such as sub-surface railway stations.

Performance

A material can be considered as being of limited combustibility if its reaction to fire performance meets the requirements of Table 1 below reproduced from Table A7 of AD-B. The fire performance of such materials may currently be demonstrated by testing to either British Standards or European Standards. Eventually it is expected that demonstrating compliance using British Standards will not be permissible as EU Directives are further implemented.

Part 2 How to comply with the 2009 Regulations 15

Table 1: Definitions of materials of limited combustibility	
Performance determined using British Standards	Performance determined using European Standards
<p>a) Any non-combustible material listed in Table 2 (below).</p> <p>b) Any material of density 300 kg/m³ or more, which when tested to BS 476-11: 1982, does not flame and the rise in the temperature of the furnace thermocouple is not more than 20^oC.</p> <p>c) Any material with a non-combustible core at least 8mm thick having combustible facings (on one or both sides) not more than 0.5mm thick. Where a flame spread rating is specified, these materials must also meet the appropriate test requirements.</p>	<p>a) Any material listed in Table 2.</p> <p>b) Any material/product classified as Class A2-s3, d2 or better in accordance with BS EN 13501-1: 2002 Fire classification of construction products and building elements, Part 1 – Classification using data from reaction to fire tests.¹⁷²</p>

¹⁷² Op Cit Guidance Note 3, Section 2.8, page 14

Re: Regulation 8.—(2) “*This provision refers to the materials used to line or cover or coat an internal wall or ceiling e.g. the paint on a suspended ceiling tile or the wall covering on a partition.*”

Applicability to existing premises

The description relating to the retrospective nature of the regulations as described earlier under Regulation 8(1) also applies to Regulation 8(2).

Discussion

Building Regulations contain provisions to control the ‘reaction to fire’ performance of materials used in buildings. This is because when there are large areas of these e.g. when they are used to line walls and ceilings, they can be instrumental in the growth of fire from a small source such as an electrical fault or a waste paper bin to one which will involve all the contents of the room. Poorly performing wall and ceiling linings aid rapid fire growth within the room while good materials will restrict it.

The FSO guide covers the reaction to fire performance of wall and ceiling linings in Appendix B, B1 Fire – resisting separation, section headed “*Décor and surface finishes of walls ceilings and escape routes*”, p 137. However, there is no guidance as to what constitutes national classes of performance or which equivalent European classes should be requested.

Performance

A material can be considered to adequately resist the spread of flame over the surface and will have, if ignited, either a rate of heat release or a rate of fire growth, which is reasonable in the circumstances, if it meets the requirements of National Class 0 or European Class B-s3, d2 or better as defined in Table 3 below which has been adapted from AD-B.

Table 3: Performance of materials which are National Class 0 or European Class B-s3, d2 or better	
Performance determined using British Standards	Performance determined using European Standards
<p>1) Non – combustible materials as defined in national class of Table 2 (NR8 (1)).</p> <p>2) if the material or the surface of a composite product is either:</p> <p>a) composed throughout of materials of limited combustibility (defined in national class of Table 1 (NR8 (1))); or</p>	<p>Any material classified as Class B-s3, d2 or better in accordance with</p> <p>BS EN 13501-1: 2002 Fire classification of construction products and building elements, Part 1 – Classification using data from reaction to fire tests.</p>

<p>b) when tested in accordance with British Standard 476: Part 7: 1987 achieves a class 1 performance and,</p> <p>when tested in accordance with British Standard 476: Part 6: 1989, has an index of performance (I) not exceeding 12 and sub-index (i_1) not exceeding 6.</p>	
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Further information on reaction to fire performance of wall and ceiling linings

Evidence of the reaction to fire performance of materials and products should be provided in test, classification or assessment reports to the appropriate standard, or be included in a certificate issued by a third party product certification body. General information on what to consider in documents demonstrating fire performance is given in Appendix 1.

The reaction to fire performance of any material or product will depend on a number of factors. Users of this guide should check that the evidence of performance for a particular material e.g. the test or classification report covers the material used in practice. Changes to substrates, facings, adhesives, coatings etc can all affect fire performance and it is important to ensure that what is installed is justified by the evidence supplied. For example, a test of a wall covering bonded to a high density substrate such as concrete, will not cover its application on a lower density one such as plasterboard.

If users of this guide are in any doubt as to the applicability of any supporting evidence they can contact the manufacturer or the organisation that produced the document e.g. the laboratory that undertook the test.

Further reassurance in the fire performance of product, including its suitability to a particular end-use application, will be obtained if the product and/or the installer is covered by a third party certification scheme. This recommendation is included in the FSO Guide under Section 8, Quality assurance of fire protection equipment and installation, p131.

Table 2 below has been reproduced from Table A6 of AD-B.

Table 2: Definitions of non-combustible materials	
Performance determined using British Standards	Performance determined using European Standards
a) Any material which when tested to BS 476-11: 1982, does not flame nor cause any rise in the temperature on either the	a) Any material classified as Class A1 in accordance with BS EN 13501-1: 2002 Fire classification of construction products and building elements, Part 1 –

<p>centre (specimen) or furnace thermocouples.</p>	<p>Classification using data from reaction to fire tests.</p>
<p>b) <i>Totally inorganic materials such as concrete, fired clay, ceramics, metals, plaster and masonry containing not more than 1% by weight or volume of organic material. (Use in buildings of combustible metals such as magnesium/ aluminium alloys should be assessed in each individual case).</i></p>	<p>b) <i>Products made from one or more of the materials considered as Class A1 without the need for testing as defined in Commission Decision 2003/424/EC of 6th June 2003 amending Decision 96/603/EC establishing the list of products belonging to Class A1 “No contribution to fire” provided for in the Decision 94/611/EC implementing Article of the Council</i></p>
<p>c) <i>Concrete bricks or blocks meeting BS EN 771-1: 2003.</i></p>	<p><i>Directive 89/106/ EEC on construction products. Non of the materials shall contain more than 1% by weight or volume</i></p>
<p>d) <i>Products classified as non-combustible under BS 476-4: 1970.</i></p>	<p><i>(whichever is the more onerous) of homogeneously distributed organic material.”¹⁷³</i></p>

N.B. FSO Guide is shorthand for the Technical Risk Assessment Guide on Transport Premises and Facilities, published under the Order.

Regulation 8—FAQ

¹⁷³ Op Cit Guidance Note 3, Section 2.8, page 16

Regulation 9—Instruction and training of persons working in premises

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Instruction and training of persons working in premises

9.—(1) *Every member of staff must be given basic instruction as soon as reasonably practicable after beginning work in station premises.*

(2) *Every member of staff must be given further basic instruction at least once in every period of seven months.*

(3) *No member of staff may be employed as the station manager unless the member of staff has been given basic instruction and, in addition, instruction—*

(a) *as to supervising and controlling action to be taken in case of fire in the premises by other members of staff;*

(b) *in making arrangements for calling for the assistance of the fire and rescue authority and securing that fire-fighters are directed to the source of any fire in the premises;*

(c) *as to taking action in case of fire in the premises to prevent the entry of members of the public to the premises;*

(d) *in the use of the means for advising members of the public in the premises on the action to be taken by them in case of fire in the premises; and*

(e) *in making arrangements for securing that the means of escape from the premises can immediately be used in case of fire and for enabling persons to leave the premises by train in case of fire.*

(4) *A fire drill must be held for members of staff not less than once in every period of six months for the purpose of providing them with training in the action to be taken in case of fire in the premises.*

(5) *The attendance of members of staff at a fire drill must be so organised as to secure that not less than one third of the number of those persons at work in the station premises at any one time have attended a fire drill in the preceding six months.*

(6) *Each fire drill in station premises must be held at a time when members of the public have access to the premises.*

(7) A record must be made—

(a) of the occasions on which instruction is given under this regulation to each member of staff; and

(b) of the fire drills held in the premises under this regulation and of the names of the persons attending each fire drill.

(8) A record made under paragraph (7) above in relation to station premises must be kept in the premises for a period of not less than three years from the date on which it was made.

Regulation 9—Guidance Notes

“All staff must be given basic instruction as soon as is reasonably practical after commencing work in a station. Refreshers of this basic instruction shall be given to each member of staff at least every seven months. The areas covered include:

- *Means of escape in case of fire*

This would require that the members of staff know the means of escape from the relevant areas of the station to which they have access. If, for any reason, certain escape routes are not available e.g. due to out-of-hours construction work, the members of staff who are within the station should be made aware of that and of the alternative routes that are available

- *Action to be taken in the event of a fire*

This would ensure that the members of staff are fully aware of the actions that they would be expected to take in the event of a fire. This would include any assistance that they need to give in evacuating the station, or any other actions that might be necessary

- *The location and use of fire fighting equipment*

This would ensure that the members of staff know the location, type and usage of all fire fighting equipment that they might use in the areas of the station to which they have access. It would specifically include portable extinguishers, but need not include equipment that is solely for the use of fire fighters (unless part of that member of staff’s responsibility includes showing fire fighters the location of such equipment)

- *The location and operation of the means for giving warning of fire*

This would ensure that the members of staff know the location and method of activating manual fire alarm call points within the station and any other method that they could use to raise the alarm

Station managers should receive the basic training as well as a more detailed training programme. The detailed training should include the procedures that the station manager would need to carry out in the event of an evacuation of the station, which would include the arrangements and procedures:

- to supervise an evacuation, including instructions and coordination of all staff within the station*
- for calling the fire and rescue service*
- for meeting the fire fighters when they arrive and ensuring that they are given all relevant information in order for them to deal with the incident*
- for preventing members of the public from entering or re-entering the premises*
- for advising members of the public on what action they should take if there is a fire (including the procedures for identifying and assisting in the evacuation of any people with disabilities)*
- for ensuring that the means of escape is immediately available*
- for coordinating with the train operators, especially if the trains are to be used to assist in the evacuation*

If the design of the station is such that adjacent areas (such as tunnels) evacuate through the station, the training should include the relevant procedures for these eventualities.

A fire drill must be held for staff every six months (maximum) to train them in action to be taken if there is a fire.

Fire drills shall be scheduled to ensure at least one third of staff have attended one in the preceding six months

Fire drills must be held when members of the public have access to the premises i.e. when the stations are open in order to increase the realism of the drills.

Genuine evacuations e.g. due either to actual incidents or false alarms can be used in the place of a drill, as long as information on the evacuation is recorded and debriefed afterwards (in the same way as would be required for an evacuation drill).

Records shall be made and kept within the station of:

- dates when instruction has been given to staff*
- dates when fire drills have been carried out and who attended them*

These records shall be kept in the station for at least three years from when they are made. The fire and rescue authority may grant an exemption from this requirement if

*they are provided with sufficient evidence that meets the criteria for an exemption see NR11 (1)*¹⁷⁴

N.B: OR stands for Old Regulation(s) and refers to those regulations which have been deleted and their provisions included in the FSO Guide. NR stands for New Regulation(s) and refers to those regulations retained from the 1989 Regulations and which have been suitably updated for 2009.

Regulation 9—FAQ

No FAQ yet

¹⁷⁴ Op Cit Guidance Note 3, Section 2.9, page 18

Regulation 10—Additional precautions to be taken

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Additional precautions to be taken

10.—(1) *All practicable steps must be taken to supervise the carrying out by persons other than members of staff of any work of construction or maintenance in the premises which presents a risk to persons in case of fire.*

(2) *The periods of duty of members of staff must be so arranged as to secure that not less than two of them are present on duty in the premises at all times when members of the public have access to the premises.*

Regulation 10—Guidance Notes

“The station manager should ensure that there is a procedure in place for the supervision of all contractors who are carrying out construction and maintenance work within the station.

This procedure would often involve the contractors having to submit and gain approval to their proposed method statement prior to starting work. The method statement would usually include a risk assessment process to identify and mitigate all fire risks that the works might introduce and should demonstrate that the works will not present an unacceptable risk to safety.

Depending on the work that is being carried out, it may be advisable to carry out a ‘pre- start’ meeting with the fire and rescue authority in order to cover any fire safety issues before the work starts. In particular, it would identify any exemptions (either temporary or permanent) that may be required under the 2009 Regulations.

At any time that members of the public have access to station, there shall be not less than two members of staff present on duty.

It should be noted that it is possible for the fire and rescue authority to grant an exemption to the requirement for two members of staff being on duty within the station if it is provided with sufficient evidence that meets the criteria for an exemption NR11 (1).”¹⁷⁵

¹⁷⁵ Op Cit Guidance Note 3, Section 2.10, page 21

N.B: OR stands for Old Regulation(s) and refers to those regulations which have been deleted and their provisions included in the FSO Guide. NR stands for New Regulation(s) and refers to those regulations retained from the 1989 Regulations and which have been suitably updated for 2009.

Regulation 10—FAQ

No FAQ yet

Regulation 11—Exemption from requirements

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Exemption from requirements

11.—(1) Paragraph (2) applies where a fire and rescue authority is satisfied in respect of any particular station premises that compliance with a requirement of any of the provisions of regulations 5(2), 6(2), 9(8) and 10(2) is inappropriate, unnecessary or not reasonably practicable.

(2) Where this paragraph applies the fire and rescue authority may by notice in writing to the occupier of the premises grant exemption from compliance with the requirement to such extent as is reasonable having regard to all the circumstances of the case and in particular to the risk in case of fire to persons in the premises.

(3) A fire and rescue authority may grant an exemption under paragraph (2) subject to such conditions as may be specified in the notice granting the exemption.

(4) A fire and rescue authority may by notice in writing to the occupier of the premises withdraw an exemption under paragraph (2) if the occupier fails to comply with any condition subject to which the exemption was granted.

Regulation 11—Guidance Notes

“It is possible for the fire and rescue authority to grant an exemption against certain provisions within the 2009 Regulations. These provisions are: 5(2), 6(2), 9(8), and 10(2).

5(2) Requirement to fit an automatic fire fighting system

6(2) Requirement to fit an automatic fire detection system

9(8) Requirement to retain records for at least three years in the station to which they relate

10(2) Requirement to have at least two persons on duty in the station at all times that members of the public are present

In order to grant the exemption, it would be necessary to prove to the fire and rescue authority that the relevant requirement would be inappropriate, unnecessary or

impractical. If an exemption is granted, the fire and rescue authority might impose additional compensatory requirements. It would be necessary for the station manager to ensure that they comply with all relevant requirements.

A fire and rescue authority may withdraw an exemption under paragraph (2) by notice in writing to the occupier of the premises if the occupier fails to comply with any condition subject to which it was granted.

The fire and rescue authority can provide exemptions that are either permanent or are limited to a particular timescale e.g. for the duration of building work that is being carried out. If the exemption has a limited timescale, the relevant documentation should clearly state the dates during which it applies.

Any exemptions that were granted under the 1989 Regulations will be deemed to also apply to the comparable provisions within the 2009 Regulations (by virtue of the general savings provisions in s 17(2)(b) of the Interpretation Act 1978). Replacing the 1989 Regulations with the 2009 Regulations will therefore not require any reapplications or changes to previous exemptions.

Any exemptions which were granted against provisions of the 1989 Regulations which do not appear in the 2009 Regulations are deemed to be null and void once the 2009 Regulations come into effect.

The numbering changed between the 1989 and the 2009 Regulations, so for clarity, a summary of the transferred exemptions is shown below.

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Table 4: Summary of transferred exemptions	
Exemptions under the 1989 Regulations:	Will automatically be considered as an exemption to the 2009 Regulations
4(1)	Does not exist
4(3)	Does not exist
5(4)	Does not exist
5(5)	5(2)
6(1)	Does not exist
6(3)	6(2)
7(1)	Does not exist
8(2)	Does not exist
10(2)	Does not exist
10(4)	10(2)
11(2)	9(8) ¹⁷⁶

¹⁷⁶ Op Cit Guidance Note 3, Section 2.11, page 22

Regulation 11—FAQ

No FAQ yet

Regulation 12—Contravention of requirements

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Contravention of requirements

12.— The requirements of regulations 4 to 10 above are imposed on the occupier of the station premises to which those regulations apply and, subject to any exemption granted (and not withdrawn) under regulation 11, the occupier of the premises shall be responsible for any contravention of the provisions of those regulations.

Regulation 12—Guidance Notes

“The occupier of the station is responsible for satisfying the provisions of the 2009 Regulations (subject to any exemption under Regulation 11) and for any contravention of them.

The “occupier” would be the same person as defined as the “responsible person” under the Order.

All enforcement of the 2009 Regulations (including dealing with any contravention of the requirements or the removal of exemptions if necessary) should be carried out in accordance with the relevant procedures under the Order.”¹⁷⁷

Regulation 12—FAQ

No FAQ yet

¹⁷⁷ Op Cit Guidance Note 3, section 2.12, page 24

Regulation 13—Revocation

The Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Revocation

13.— *The following instruments are revoked so far as they apply to England—*

(a) the Fire Precautions (Sub-surface Railway Stations) Regulations 1989(1);

(b) the Fire Precautions (Sub-surface Railway Stations) (Amendment) Regulations 1994(2).

(1)—[S.I. 1989/1401](#). The enabling powers for those Regulations – the Fire Precautions Act [1971 \(c.40\)](#), ss 12(1), (3) and (4), 37(2) and (3) and 40(1) – were repealed by the Regulatory Reform (Fire Safety) Order 2005 ([S.I. 2005/1541](#)), Sch 2 para 8 – but the 1989 Regulations were preserved in effect as if made under art 24 of that Order, by virtue of the Interpretation Act [1978 \(c.30\)](#), s 17(2)(b). The powers of the Secretary of State under the Regulatory Reform (Fire Safety) Order 2005 were transferred, so far as they are exercisable in relation to Wales, to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 2006 ([S.I. 2006/1458](#)).

(2)—[S.I. 1994/2184](#).

Regulation 13—Guidance Notes

“This regulation is relatively self explanatory, in that it revokes the 1989 Regulations (including the 1994 amendment to them).”¹⁷⁸

Regulation 13—FAQ

No FAQ yet

¹⁷⁸ Op Cit Guidance Note 3, Section 2.13, page 24

Fire Safety (Employees' Capabilities) (England) Regulations 2010

2010 No. 471

Came into force on 6th April 2010

Regulation 1—Citation, commencement, extent and application

The Fire Safety (Employees' Capability) (England) Regulations 2010

Citation, commencement, extent and application

1.—(1) *These Regulations may be cited as the Fire Safety (Employees' Capabilities) (England) Regulations 2010 and shall come into force on 6th April 2010.*

(2) *These Regulations apply to England only.*

Regulation 1—Guidance Notes

These Regulations are made in exercise of the powers conferred by article 24 of the Regulatory Reform (Fire Safety) Order 2005

The explanatory note to the Regulations makes clear that they implement article 6(3)(b) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, and mirror regulation 13(1) of the Management of Health and Safety at Work Regulations 1999 ([S.I. 1999/3242](#)).

Fire and Rescue Service Circular number 7/2010¹⁷⁹ highlights that the regulations rectify a minor gap in the implementation of the Framework Directive on Health and Safety of Workers 89/391/EEC (HSWA).

Regulation 1— FAQ

No questions have been raised in relation to this article at this time.

¹⁷⁹ ENGLAND. Department for Communities and Local Government, *Fire and Rescue Service Circular, Fire Safety Policy Team Update 7/2010*, 8 March 2010

Regulation 2—Employer to take employees’ capabilities into consideration

The Fire Safety (Employees’ Capability) (England) Regulations 2010

Employer to take employees’ capabilities into consideration

2.—Every employer must, in entrusting tasks to employees, take into account their capabilities as regards health and safety, so far as those capabilities relate to fire.

Regulation 2—Guidance Notes

The Directive mentioned in the guidance notes to Regulation 1, requires employers to take into account the capabilities of their workers as regards health and safety when entrusting tasks to employees—including fire safety.

The making of these regulations was a ‘technical exercise’ to ensure that EU legislation was properly transposed into English fire safety law.

Regulation 2— FAQ

No questions have been raised in relation to this article at this time.

Fire Safety (England) Regulations 2022

2022 No. 547

Came into force 23 January 2023

Regulation 1—Citation, commencement, extent and application

Fire Safety (England) Regulations 2022

Citation, commencement, extent and application

- 1.—(1) *These Regulations may be cited as the Fire Safety (England) Regulations 2022.*
- (2) *These Regulations come into force on 23rd January 2023.*
- (3) *These Regulations extend to England and Wales but apply in England only.*
- (4) *These Regulations do not apply in relation to domestic premises within the House of Commons or the House of Lords or to military premises.*

Regulation 1 Guidance Notes

Although these regulations extend to England and Wales, it is anticipated that the application to England only is a result of devolution and the Senedd Cymru will be responsible for applying these or similar regulations in Wales.

While these regulations do not apply to the stated premises types (domestic premises within the House of Commons or the House of Lords or to military premises), the regulations are made in exercise of the powers conferred by article 24(1) of the Order and as such, apply to responsible persons and persons having duties under the Order, if premises fall within scope of the Order and these regulations. Furthermore, enforcing authorities under article 25 of the Order have a duty to enforce these regulations. For example, if premises under the enforcement duty of any enforcing authority contain two or more sets of domestic premises (other than those disappplies at regulation 1(4)), like a workplace which is or is on a construction site, the enforcing authority, in this case the HSE, must take note of these regulations.

Regulation 1— FAQ

Q. The regulations seem to imply duties on the response and protection functions of fire and rescue authorities. Is this deliberate?

- A. Yes. A written ministerial statement from Lord Greenhalgh made this clear. He wrote “*The Fire Safety (England) Regulations 2022 will require responsible persons to send information ... which will help fire and rescue services better plan for and respond to a fire. They will also improve fire safety in high-rise buildings by setting a baseline on safety checks on lifts for firefighters and other key pieces of firefighting equipment and, ... , on doors. ...*”¹⁸⁰

¹⁸⁰ HANSARD, *Fire Reform White Paper and Improving Fire Safety for the Public*, volume 714: debated on Wednesday 18 May 2022 [online], 2022, available from <https://hansard.parliament.uk/commons/2022-05-18/debates/2205183000006/FireReformWhitePaperAndImprovingFireSafetyForThePublic> [Accessed 14 July 2022], column 44 WS

Regulation 2—Interpretation

Fire Safety (England) Regulations 2022

Interpretation

2.—(1) *In these Regulations—*

“Approved Document B” means Approved Document B (Fire Safety), supporting requirements B1 to B5 of Part B of Schedule 1 to the Building Regulations 2010(1);

“high-rise residential building” has the meaning given in regulation 3;

“lift for use by firefighters” means any lift located within a firefighting shaft, and any passenger lift which has an override switch that enables the fire and rescue service to take control of the lift;

“local fire and rescue authority” means the fire and rescue authority in whose area the building is situated;

“military premises” means—

- (a) military barracks,*
- (b) a building occupied solely for the purposes of the armed forces, or*
- (c) a building occupied solely for the purposes of any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(2);*

“secure information box” means a box of the description in regulation 4.

(2) Other expressions in these Regulations which are listed in Appendix A to Approved Document B are to be interpreted in accordance with the meaning given to those expressions in that Appendix.

Regulation 2— Guidance Notes

‘Approved Document B’ – It may be interesting to see reference to a design guide for ‘building work’ included in these regulations for the occupation phase of the building lifecycle. Enforcing authorities might take note that this interpretation relates to these regulations and may not change the interpretation at article 2 of the Regulatory Reform (Fire Safety) Order 2005, hereinafter referred to as the Order.

‘Lift for use by fire-fighters’ – Inspecting officers might note that the interpretation differs from that given in design guides like BS 9999 and does not make reference to

standards of lift installation e.g. BS EN 81-72. The broad interpretation given in these regulations allow inspectors to take a pragmatic approach to lifts in premises that pre-date current design guides and standards.

‘Local fire and rescue authority’ – This interpretation is adopted from article 25(a) of the Order and (in these regulations) splits out local fire and rescue authorities from the generic term ‘enforcing authorities’ used in the Order. The reason is made somewhat clear in later regulations, in relation to the passage of information to authorities in connection with providing them with operational intelligence. It is possible that the same operational intelligence might have benefit to fire services maintained by the military though it should be noted, in regulation 1, that these regulations do not apply to military premises.

‘Key fire-fighting equipment’ – This is a different concept from the meaning of fire-fighting equipment at article 13. Instead of equipment provided for the RP / nominated competent persons to tackle fires in premises, ‘key fire-fighting equipment’ refers to dry and wet rising mains, smoke control systems and suppression systems. The related articles in the Order are article 38, article 14(2)(b), and article 13

‘Essential fire-fighting equipment’ – This is a different concept from the meaning of fire-fighting equipment at article 13. The term includes ‘key fire-fighting equipment’ and adds certain active fire safety measures, namely fire detection and fire alarm systems, evacuation alert systems and automatic door release mechanisms linked to fire alarm systems. The related articles in the Order are article 13(1)(a), article 15(1)(a), and article 14(2)(b).

Regulation 2— FAQ

No questions have been raised in relation to this article at this time.

Regulation 3—Meaning of high-rise residential building

Fire Safety (England) Regulations 2022

Meaning of high-rise residential building

3.—(1) *In these Regulations “high-rise residential building” means a building containing two or more sets of domestic premises that—*

(a) is at least 18 metres above ground level; or

(b) has at least seven storeys.

(2) *For the purposes of paragraph (1)—*

(a) the height of a building is to be measured to the height to the top storey in accordance with Appendix D to Approved Document B;

(b) when determining the number of storeys a building has—

(i) any storey which is below ground level is to be ignored,

(ii) any mezzanine floor is a storey if its internal floor area is at least 50% of the internal floor area of the largest storey in the building which is not below ground level, and

(iii) a storey is treated as below ground level if any part of the finished surface of the ceiling of the storey is below the ground level immediately adjacent to that part of the building.

Regulation 3— Guidance Notes

It should be noted that this interpretation of ‘high-rise residential building’ applies a height threshold to the excepted domestic premises included in the scope of the Order (as amended by The Fire Safety (England) Regulations 2022) i.e., “*Where a building contains two or more sets of domestic premises*”. The height threshold applied should be noted to be either the threshold in metres or the threshold in the number of storeys.

The reference to Approved Document B links closely the regulation of fire safety in occupied buildings with the regulation of fire safety in connection with regulated building work.

Regulation 3— FAQ

No questions have been raised in relation to this article at this time.

Regulation 4—Secure information box

Fire Safety (England) Regulations 2022

Secure information box

4.—(1) The responsible person in relation to a high-rise residential building must install and maintain a secure information box in or on the building.

(2) The secure information box must be—

(a) positioned at a location in or on the building which is readily accessible to the fire and rescue authority;

(b) capable of containing the documents required to be placed in it by these Regulations;

(c) reasonably secure from unauthorised access and vandalism.

(3) The responsible person must ensure that the following information is contained within the secure information box—

(a) the name, address and telephone number within the United Kingdom of the responsible person;

(b) the name and contact information of such other persons within the United Kingdom who are provided with the facilities to and are permitted to access the building as the responsible person considers appropriate;

(c) such documents as are required to be placed in it by these Regulations.

(4) The responsible person must provide the local fire and rescue authority with anything required to enable it to access the secure information box and must provide anything additional required as soon as reasonably practicable if there are any changes to those requirements.

(5) The responsible person must inspect the secure information box at least annually and ensure that it continues to meet the requirements in paragraph (2).

Regulation 4— Guidance Notes

The requirement to install and maintain a secure information box is absolute and must be done. This is unusual for requirements and prohibitions imposed by or under the Order, which (for most fire safety measures) are softened by the principles

of risk assessment. In particular, the duty in relation to maintenance under the Order at article 17(1) is required '*Where necessary in order to safeguard the safety of relevant persons ...*'.

Paragraph (2) uses the term 'reasonably secure', which might have connections to the terms 'so far as is reasonably practicable' and 'as low as reasonably practicable' used in the Order. Enforcing authorities and inspectors might consider this when enforcing this requirement.

Similarly, the regulation 4(3) is an absolute requirement that the responsible person must ensure the box contains the information stated. The stated information appears to lend itself to being provided for the purposes of identifying a key holder for the building and for other documents. The UK-based name address and telephone number of the responsible person might be useful for protection as well as response activities.

Paragraph (4) imposes a duty on the responsible person to give a key or other access facility to the local fire and rescue authority. Fire and rescue authorities (by implication) have a duty to index and maintain those access facilities provided to them under this paragraph and ensure that the facilities are available to operational crews attending incidents at the building to which those facilities relate. There is an ongoing duty imposed on the responsible person (and by implication on the local fire and rescue authority) to update access facilities to the secure information box.

A minimum inspection period is imposed on the responsible person to ensure that the secure information is readily accessible to the local fire and rescue service in or on the building, remains capable of containing the documents required and is reasonably secure from unauthorised access and vandalism. This is a departure from the review periods stated in the Order, which relate to having a reason to suspect a loss of validity or there has been a significant change. The requirement also sits outside the usual scope of maintenance under article 17 of the Order, which might otherwise have been suitable for address the requirement of regulation 4(5).

There is a foreseeable risk that the establishment of a minimum time period (annually) could become a tick-box exercise if not robustly enforced. Enforcing authorities and inspectors should be aware of this risk to ensure that the annual inspection by responsible persons is meaningful and delivers the desired outcomes (that the secure information box is accessibly positioned, capable of containing the required documents, and is secure).

Regulation 4— FAQ

No questions have been raised in relation to this article at this time.

Regulation 5—Design and materials of external walls

Fire Safety (England) Regulations 2022

Design and materials of external walls

5.—(1) *The responsible person in relation to a high-rise residential building must prepare a record of the design of the external walls of the building, including details of the materials from which they are constructed.*

(2) *The record prepared under paragraph (1) must include details of the level of risk identified in the risk assessment required under article 9 of the Regulatory Reform (Fire Safety) Order 2005 that the design and materials of the external walls give rise to and any mitigating steps that have been taken in respect of that risk.*

(3) *The responsible person must prepare a revised record under paragraph (1) if there are any significant changes to the external walls of the building.*

Regulation 5— Guidance Notes

The requirement under this regulation is absolute and must be complied with. The reference to external walls of the building have interpretation from Appendix A to Approved Document B. That interpretation is:

“The external wall of a building includes all of the following.

- *Anything located within any space forming part of the wall.*
- *Any decoration or other finish applied to any external (but not internal) surface forming part of the wall.*
- *Any windows and doors in the wall.*
- *Any part of a roof pitched at an angle of more than 70 degrees to the horizontal if that part of the roof adjoins a space within the building to which persons have access, but not access only for the purpose of carrying out repairs or maintenance.”*

Subject to this interpretation, the record required under paragraph (1) must include the design of the bulleted list and include the materials from which they are constructed.

Furthermore, the record required under paragraph (1) must include, not just an assessment of risk posed by the EWS, but moreover details of the level of risk identified in the assessment of risks to which relevant persons are exposed (under article 9(1) of the Order) for the purpose of identifying the general fire precautions

that need to be taken by the responsible person. The record required must also include details of any mitigating steps that have been taken. Other than requiring 'details of the level of risk', which is a new term, the requirements are similar to those imposed by article 9(1) of the Order. Under article 9(1), the responsible person must assess fire risks to identify the general fire precautions he needs to take, including what has been done and what will be done to keep people safe in case of fire.

Paragraph (3) is a partial repeat of the requirements to review at article 9(3). Enforcing authorities and inspectors might note that article 9(3) is not disapplied by these regulations and (as such) might chose to take action if, in the opinion of the enforcing authority, there is reason to suspect that the assessment (on which the record prepared under regulation 5(2) is based) is no longer valid (article 9(3)(a)) or there has been a significant change in the matters to which that assessment relates (article 9(3)(b)).

Regulation 5— FAQ

No questions have been raised in relation to this article at this time.

Regulation 6—Floor plans and building plan

Fire Safety (England) Regulations 2022

Floor plans and building plan

6.—(1) *The responsible person in relation to a high-rise residential building must prepare a plan for each floor of the high-rise residential building.*

(2) *The floor plans must, together, identify the location of all lifts and identify if the lift is one for use by firefighters or an evacuation lift, and the key fire-fighting equipment in the whole building.*

(3) *If the plans for two or more floors of a high-rise residential building would be the same in all material respects, the responsible person may comply with the obligation under paragraph (1) in relation to those floors by preparing a single plan that clearly indicates the floors to which the plan relates.*

(4) *The responsible person must also prepare a single-page building plan identifying the following—*

- (a) the environs of the building;*
- (b) details of the use of the building, for example for commercial or residential purposes;*
- (c) access for fire and rescue appliances;*
- (d) the dimensions of the building;*
- (e) information on the number of storeys of the building and the number of basement levels (if any);*
- (f) information regarding the presence of maisonettes or scissor section flats;*
- (g) inlets for dry-rising mains;*
- (h) inlets for wet-rising mains;*
- (i) the location of shut-off controls for any sprinklers;*
- (j) access points for the building;*
- (k) the location of the secure information box;*
- (l) the location of the controls for any smoke control system;*
- (m) the location of any firefighting shaft;*
- (n) the location of main stairways in the building;*
- (o) the location of the controls for any evacuation alert system.*

(5) *The responsible person must place a hard copy of the floor plans and building plan required by paragraphs (1) and (4) in the secure information box.*

(6) *The responsible person must update the floor plans and building plan as soon as reasonably practicable after any change to the layout of the building or location of key fire-fighting equipment.*

(7) *In this regulation “key fire-fighting equipment” includes—*

- a. inlets for dry-rising mains;*
- b. inlets for wet-rising mains;*
- c. outlets for dry-rising mains;*
- d. outlets for wet-rising mains;*
- e. smoke control systems;*
- f. suppression systems.*

Regulation 6— Guidance Notes

The requirement under this regulation is absolute and must be complied with. The responsible person must prepare a plan of each different floor (see paragraph (3)) of the building in scope. The plans must identify the list of matters stated in paragraph (2). The list includes the term “*key fire-fighting equipment*”, see paragraph (7). It should be noted that this term is different from the meaning given to “*fire-fighting equipment*” in the Order at article 13(1). In the latter, fire-fighting equipment refers to measures (taken by the responsible person) in relation to the means for fighting fires on the premises, whereas the former “*key fire-fighting equipment*” refers to facilities, equipment and devices provided in the building for the use by or protection of fire-fighters i.e., those which must be maintained by the responsible person under article 38 of the Order.

The list at paragraph (4) raises interesting questions for which guidance or an industry standard are required. In providing all the information listed in subparagraphs (4)(a) to (4)(o), it might not be possible to comply with the requirement to meet the requirement for a single page. Other issues to be resolved in guidance or industry standards might include how much of the surrounding area is necessary to show on the plan (a); how to measure the building to determine the dimensions of the building (d) for an irregular shaped building or for one which has dimensions that change with the height of the building; whether the requirement to show the location of the secure information box (k) will be enforced, since the building plan (on which this information must be provided) must be placed in the secure information box (see paragraph (5)); the location of the controls for any

smoke control (l) is required in the singular, when there may be more than one location of such controls; the location of any fire-fighting shaft (m) and the location of main stairways in the building are required without a corresponding requirement to show a safe route for fire-fighters to reach them.

Regulation 6— FAQ

Q. How should the number of storeys of the building and the number of basement levels required to be identified in the building plan (paragraph (4)(e) be measured?

A. Regulation 2(2) states that expressions in these Regulations may be interpreted in accordance with the meaning given in Appendix A to Approved Document B. For the number of basement floors, that Appendix (and associated reference) should provide the answer. Although the regulations appear to limit the interpretation of expressions used in these regulations to those listed in Appendix A to Approved Document B, for the purpose of determining the number of storeys, reference to Appendix D to Approved Document B might be reasonable, in particular D4 (for number of storeys).

Regulation 7—Lifts and essential fire-fighting equipment

Fire Safety (England) Regulations 2022

Lifts and essential fire-fighting equipment

7.—(1) The responsible person in relation to a high-rise residential building must undertake monthly routine checks of lifts for use by firefighters, evacuation lifts and essential fire-fighting equipment within the building.

(2) Where the responsible person identifies any fault with a lift for use by firefighters, evacuation lift or piece of essential fire-fighting equipment, the responsible person must take steps to rectify the fault.

(3) Where a fault identified under paragraph (2) cannot be rectified within a 24-hour period beginning with the time the fault is identified, the responsible person must, as soon as reasonably practicable—

- (a) report the fault to the local fire and rescue authority by electronic means; and*
- (b) report the rectification of the fault to the local fire and rescue authority by electronic means when it has been rectified.*

(4) The responsible person must make a record of the monthly checks undertaken pursuant to this regulation and make that record accessible to the residents of the building.

(5) In this regulation—

“essential fire-fighting equipment” means key fire-fighting equipment within the meaning of regulation 6(7) and any of the following located within the common parts of the building—

- (a) fire detection and fire alarm systems including any detectors linked to ancillary equipment such as smoke control systems,*
- (b) evacuation alert systems,*
- (c) automatic door release mechanisms linked to fire alarm systems;*

“routine check” means a check that any lift or piece of equipment is in efficient working order and in good repair, carried out in accordance with the relevant industry standard or any recommendations made by the manufacturers of equipment within an operators’ manual.

Regulation 7— Guidance Notes

Although the term “lift for use by fire-fighters” is given interpretation at regulation 2, the term “lifts” used in the title to this regulation also includes ‘evacuation lifts’.

Paragraphs (1) and (2) replicate the duty in respect of maintenance, imposed by article 17(1) of the Order insofar as the term “routine check” is given the same meaning as article 17(1), but importantly the requirement imposes a layer of prescription with respect to the frequency of routine checks. Monthly checks of lifts and essential fire-fighting equipment must be undertaken by the responsible person.

Enforcing Authorities and inspectors should note that the term “essential fire-fighting equipment” is different from the term “key fire-fighting equipment” introduced at regulation 6, and is given meaning at paragraph (5). The term is broader than ‘key fire-fighting equipment’ because it includes specified active fire safety measures, in particular those in connection with measures for securing that, at all material times, the means of escape can be safely and effectively used; and those in connection with measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises. In other words, paragraph 5(a) contains requirements in relation to detection and warning in relation to securing the means of escape; paragraph 5(b) contains requirements in connection with detection and warning; and paragraph 5(c) makes requirements in relation to securing the means of escape.

A further layer of prescription is required at paragraph (3) when faults with lifts or essential fire-fighting equipment are identified. The requirement implies that efforts should be made to rectify the fault within 24 hours of its discovery and (if that cannot be done), there is a duty to inform the local fire and rescue authority. The report of the fault to the local fire and rescue authority must be made electronically. For this purpose, local fire and rescue authorities will require electronic means to receive reports of faulty equipment and should consider how to respond and what actions they will take, when notified of a fault with lifts or essential fire-fighting equipment. It is foreseeable that these reports will be relevant to the response and the protection functions of the local fire and rescue authority.

Regulation 7— FAQ

Q. Do the requirements in regulation 7 require the Responsible Person to use safety assistance e.g. in compliance with article 18 of the Order to undertake the checks of lifts and essential fire-fighting equipment?

A. The expectation is that the checks required are visual checks and simple operation of test switches etc. There is not an expectation that technically competent persons need to undertake these simple checks.

Regulation 8—Wayfinding signage

Fire Safety (England) Regulations 2022

Wayfinding signage

8.—(1) The responsible person in relation to a high-rise residential building must ensure that the building contains clear markings of floor identification and identification of domestic premises.

(2) For the purposes of paragraph (1), the “markings” means an identification designed and located in accordance with the guidance in Volume 1 of Approved Document B(1) on each landing within the stairways and in the lift lobbies of the floor level marked in such a way as to be visible both in low level lighting conditions or when illuminated with a torch.

Regulation 8— Guidance Notes

The requirements of this regulation could fit comfortably under the banner of facilities for the protection of or use by fire-fighters but, importantly, whereas the Order contains duties on responsible persons to maintain such facilities, the Order lacks the ability for enforcing authorities to require such facilities where they are lacking. Likewise, the Order imposes no duties on responsible person to provide facilities. By contrast, regulation 8 imposes a requirement on responsible persons to provide markings to help fire-fighters to identify floors and domestic premises. It may also be noted that this regulation imposes duties in addition to those required at article 14(2)(g).

Regulation 8— FAQ

No questions have been raised in relation to this article at this time.

Regulation 9—Information to residents

Fire Safety (England) Regulations 2022

Information to residents

9.—(1) The responsible person must display fire safety instructions in a conspicuous part of any building—

(a) which contains two or more sets of domestic premises; and

(b) which contains common parts through which residents would need to evacuate in the case of an emergency.

(2) The fire safety instructions must—

(a) be in a comprehensible form that the residents can be reasonably expected to understand; and include—

(i) instructions relating to the evacuation strategy for the building,

(ii) instructions as regards how to report a fire to the fire and rescue authority, and

(iii) any other instruction that tells residents what they must do when a fire has occurred.

(3) The responsible person must provide a copy of the instructions referred to in paragraph (1)—

(a) to a new resident of domestic premises within the building, as soon as reasonably practicable after that resident moves into the premises; and

(b) to all residents of domestic premises within the building within each period of 12 months beginning with the date these Regulations come into force.

(4) After any material changes to the instructions, the responsible person must display the fire safety instructions in accordance with paragraph (1) and provide a copy to residents.

Regulation 9— Guidance Notes

N.B. The requirement imposed by paragraph (1) has a wider scope than previous regulations. It applies to all buildings that contain two or more domestic premises and have parts of the building used in common (common parts) i.e., the height threshold is removed at this regulation.

Paragraph (1) imposes a requirement on the responsible person similar to the practical application of the duty imposed by article 15(1)(a) with respect to procedures to be followed in the event of fire i.e., fire action notices.

The list of requirements made at paragraph (2) could be included in the contents of a fire action notice. However, the fire safety instructions are presented (fire action notice or otherwise), the instructions must be displayed in accordance with paragraph (1) and copies must be provided to new residents of domestic premises in the building and to all residents within each 12 month period from 23 January 2023 in accordance with paragraph (3)

Regulation 9— FAQ

No questions have been raised in relation to this article at this time.

Regulation 10—Fire doors

Fire Safety (England) Regulations 2022

Fire doors

10.—(1) *The responsible person, in relation to a building which contains two or more sets of domestic premises and which contains common parts through which residents would need to evacuate in the case of an emergency, must provide the required information about fire doors to the residents of the building.*

(2) *The required information referred to in paragraph (1) is information to the effect that*

(a) fire doors should be kept shut when not in use;

(b) residents or their guests should not tamper with the self-closing devices; and

(c) residents should report any faults or damages with doors immediately to the responsible person;

(3) *The required information must be provided by the responsible person —*

(a) to a new resident of domestic premises in the building, as soon as reasonably practicable after that resident moves into the premises; and

(b) to all residents of domestic premises within the building, within each period of 12 months beginning with the date these Regulations come into force.

(4) *The responsible person, in relation to a building which contains two or more sets of domestic premises and which is above 11 metres in height, must use best endeavours to undertake checks of fire doors at the entrances of individual domestic premises in the building at least every 12 months.*

(5) *The responsible person must keep a record of the steps taken to comply with the obligation in paragraph (4) including in any case where access to the domestic premises was not granted during any 12 month period, the steps taken by the responsible person to try and gain access.*

(6) *The responsible person in relation to a building which contains two or more sets of domestic premises and which is above 11 metres in height, must undertake checks of any fire doors in communal areas of the building at least every 3 months.*

(7) *The checks required by paragraphs (4) and (6) must include ensuring that the self-closing devices for the doors are working.*

(8) *For the purposes of this regulation, height measurement of a building is to be calculated to the height to the top storey in accordance with regulation 3(2)(a).*

Regulation 10— Guidance Notes

It is interesting to see a regulation made under article 24(1) of the Order in relation fire doors, when the term does not appear in the Order but is incorporated within article 14(2)(b).

In common with regulation 9, regulation 10 is given a wide application, insofar as there is no associated height threshold. Responsible persons of buildings in scope (two or more sets of domestic premises and common parts used by residents for evacuation) must provide residents with the information about fire doors specified at paragraph (2).

To assist responsible persons, it will be helpful for them to understand which doors in the building are necessary fire doors and which are not. It will also be helpful to understand what is included in the term 'tamper' and whether the advice (subject to the requirement) extends to fire doors inside domestic premises.

N.B. New scope at paragraph (4) where a new height threshold of 11m is introduced.

For buildings within the new scope (two or more sets of domestic premises and above 11m), the responsible person must make checks of fire doors at the entrances of domestic premises. The reference to 'fire doors at the entrance of individual domestic premises' should also be read to apply to exit doors e.g., to duplex dwellings, where the exit door from the dwelling is required to be a fire door. The term 'best endeavours' is introduced in relation to those checks (discussed further in the paragraph below). A time period of at least every 12 months is prescribed for the checks.

To comply with this requirement and in-line with paragraph (5), responsible persons must keep a record of the steps they have taken with respect to those fire doors they were unable to check, in order to demonstrate their 'best endeavours' and (for completeness) good practice would suggest the keeping of records of the fire doors they were able to check. Enforcing authorities might note that this requirement is similar to the duties imposed on responsible persons at article 11(1)—Fire safety arrangements of the Order. Enforcing Authorities might also consider whether 'best endeavours' is linked to a measure of 'reasonability' and consider the steps which, in their opinion, will satisfy the requirement. The range of communication methods used, might be used to measure best endeavours e.g., notices placed in common areas, letters sent to each occupant / dwelling, electronic communication (where possible), meetings with tenant groups, discussions with occupiers, etc. When taking steps to comply with this regulation, responsible persons and enforcing authorities should be aware of the additional requirements imposed by the amendments made to the Order by the Building Safety Act 2022 at Section 156, in particular the insertion of article 21A—Provision of information to residents of domestic premises.

Paragraph (6) imposes a similar requirement in respect of checks on fire doors in common areas. This requirement also reflects the duty at article 11(1) of the Order, but whereas the Order makes no reference to frequency, the checks of fire doors in common areas under this regulation are to be undertaken on a prescribed frequency of 3 months. If this requirement is not robustly enforced by enforcing authorities, there is a risk that this requirement could become tick-box exercise.

It might seem obvious to fire safety professionals that (other than fire doors which are kept locked shut) a fire door without a working self-closing device is not a fire door, paragraph (7) makes clear that part of the checks required at paragraphs (4) and (6) must include a check that the self-closing device is working. For the sake of clarity, a self-closing device on a fire door is deemed to be working if the device closes the door fully into its rebate from any angle of swing, overcoming any latching device. Responsible persons should understand the influence / implications that any installed smoke control system might have on the correct operation of fire doors in communal areas of the building.

Regulation 10— FAQ

- Q. Does this regulation require the Responsible Person to employ a competent person e.g. in accordance with article 18 of the Order to undertake the checks of fire doors?**
- A. No. It is anticipated that the checks of fire doors (required under regulation 10) are high level check for simple aspects of compliance that can be undertaken by the RP or by a briefed employee of the RP.

Regulation 11—Provision of information to the local fire and rescue authority

Fire Safety (England) Regulations 2022

Provision of documents to local fire and rescue authority

11. *The responsible person in relation to a high-rise residential building must provide the local fire and rescue authority by electronic means with the documents specified in —*

(a) regulation 5 (design and materials in external walls); and

(b) regulation 6 (floor plans and building plan).

Regulation 11— Guidance Notes

N.B. The scope of Regulation 11 returns to the original scope of a building containing two or more sets of domestic premises that meet the height threshold of at least 18 metres (above ground level) or has at least seven storeys.

Responsible persons must use electronic means to provide local fire and rescue authorities with documents specified in relation to design and materials in external walls (Regulation 5), and in relation to floor plans and the building plan (Regulation 6).

Local fire and rescue authorities should have in place a means to receive these electronic documents and which departments should be informed of the receipt of any such documents.

Regulation 11— FAQ

No questions have been raised in relation to this article at this time.

Regulation 12—Duty to Review

Fire Safety (England) Regulations 2022

Duty to review

12.—(1) *At intervals of no more than 5 years, the Secretary of State must—*

- (a) carry out a review of the operation and effect of these Regulations; and*
- (b) publish the conclusions of the review in a report.*

(2) *Any report must in particular—*

- (a) set out the objectives intended to be achieved by these Regulations;*
- (b) assess the extent to which those objectives are achieved;*
- (c) assess whether those objectives remain appropriate; and*
- (d) where the objectives remain appropriate, assess the extent to which they could be more effectively achieved.*

Regulation 12— Guidance Notes

There are no guidance notes to enhance this regulation at this time.

Regulation 12— FAQ

No questions have been raised in relation to this article at this time.