

Principles for effective regulation of fire safety in purpose built blocks of flats

January 2022

Introduction

This advice has been written to reflect the position once the Fire Safety Act 2021 has commenced. It has been published ahead of commencement so that regulators can consider it when preparing for the post-commencement landscape.

This guidance was developed jointly by the Local Government Association (LGA), National Fire Chiefs Council (NFCC) and the Chartered Institute of Environmental Health (CIEH). Given that the government expects to commence the Act shortly, LGA, NFCC and CIEH encourage regulators to begin considering joint activity and strategies without delay.

These principles do not constitute legal advice. Enforcing authorities must consider their individual circumstances and arrangements in their own area and seek their own legal advice.

Scope & Purpose

These principles have been developed to support local authorities (LAs) and fire and rescue authorities to effectively regulate fire safety in purpose built blocks of flats. These principles are intended for buildings over 11 metres but may be utilised for other building types. These principles are not intended for houses in multiple occupation and do not replace the Memorandum of Understanding which accompanies the LACORS Guidance nor are they intended to apply to local authority owned and managed blocks of flats.

These principles are intended to supplement existing guidance and support consistent decision-making. They are not binding on enforcing authorities and do not constitute legal advice.

The involvement of individual local authorities with the regulation of purpose built blocks of flats is multi-faceted and includes;

- Planning
- Building Control
- Housing enforcement
- Health and Safety enforcement

Within each local authority a range of departments may need to be engaged in ensuring the safety of residential buildings.

Fire and rescue authorities (FRAs) have a statutory duty to enforce the provisions of the Regulatory Reform (Fire Safety) Order 2005 (FSO) in regulated premises in relation to purpose built blocks of flats the Fire Safety Order applies to the structure, external walls and any common parts of the building including doors which open onto common corridors. The Fire Safety Order does not extend to the individual flats where they are occupied as a single private dwelling. Fire and Rescue Services (FRS) are required to produce an Integrated Risk Management Plan which considers the risks in their area

and sets out how its functions will be delivered to prevent fires and other incidents and mitigate the impact of identified risks.

Local housing authorities (LHAs) have a general duty to keep housing conditions in their area under review. Housing Act 2004 (HA) powers require an assessment of hazards and the risk they pose to the health and safety of occupants and visitors. Fire is one of 29 hazards that are required to be assessed as part of the Housing Health and Safety Rating System (HHSRS). The HHSRS and powers under the Housing Act can be used to take action in relation to individual dwellings (where these are occupied as a residents only or principal home) and the escape routes from the dwellings. In cases where a local authority suspects there may be a hazard it has a duty to inspect the premises. Where an inspection has been undertaken and a hazard identified in a residential premises the LHA has a duty to take action in relation to Category 1 Hazards and a power to take action in relation to Category 2 Hazards.

Both FRAs and LHAs are required to have regard to the principles of the Regulators Code.

The Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 offer different mechanisms to address the risk of fire in a building. The Fire Safety Order is focussed on the management of fire risks in the building as a whole and the risk to residents from a fire in the building but not within their individual dwelling. The Housing Act 2004 is primarily focussed on the risk to residents from fire in individual dwellings and their associated escape routes together with reduction of the risk in the building as a whole. The Fire Safety Order is primarily concerned with the safety of the building in the event of a fire. The different legislative powers can be used in isolation or as part of a co-ordinated approach to holistically addressing safety concerns. The extent to which either piece of legislation is appropriate will require determination on a case by case basis.

Overarching principles

The primary purpose of regulating fire safety is to ensure the safety of the public and this should be the basis for determining the most appropriate course of action by regulators including which authority should take a lead role.

At a local level, this may be determined in respect of particular property types, by ownership portfolio or on a building by building basis. Where the local housing authority has no enforcement powers then the FRS should operate as the lead regulator.

The LHA and the FRS should communicate and collaborate at both a strategic and operational level on a regular basis in order to facilitate an improved understanding of each other's role. It is recommended that this should include;

- Strategic level consultation which involves formal meetings at strategic management level to agree and review policy and procedural matters
- Tactical level consultation – clearly established communication mechanisms for regulators to request and share information about particular buildings
- A protocol for sharing information about action being taken to address imminent risk and agreement on the respective roles of each Agency in each case
- Determine and agree appropriate mechanisms for consultation, including where necessary timescales for consultation in relation to formal enforcement action and establish associated processes
- Determine and agree mechanisms for recording information about buildings and any action taken including multiagency reviews

LHA and FRS should establish clear information sharing protocols which will enable both regulators to identify buildings which would benefit from joint working and to avoid inefficiency and duplication of work. This does not replace the statutory requirements to consult when taking enforcement action.

As well as this liaison between regulators, in those cases where enforcement action that might include prohibition of part of the building, the relevant local authority departments should be consulted at an early stage to establish needs of residents and consider alternative accommodation. The local authority may have a duty to provide advice and assistance and in limited circumstances to provide short term alternative accommodation. The extent of the local authority's obligations and the nature of its assistance need to be considered at the earliest practical stage.

Considerations for developing a strategic approach to interventions

The Regulators Code requires regulatory activity to be based on risk and an evidence based approach to determining priority risks and the allocation of resources. The profile of housing stock will vary significantly across different areas and this will include the age and condition of buildings, tenure and the demographics of occupation. The proportion of flats within the overall residential building stock will be a key consideration in determining a strategic approach to regulation.

It is recommended that LHAs and FRAs consider the following issues when determining their approach to regulation of these buildings;

- The proportion of purpose built blocks of flats as part of their regulated premises
- The location, age and relative risk in relation to fire and other hazards that are likely to be present in purpose built blocks of flats and other residential accommodation where both pieces of legislation apply (in particular Houses in Multiple Occupation)
- The ownership profile of purpose built blocks of flats across the area
- The tenure mix in purpose built blocks of flats and the impact of additional regulatory requirements on ensuring fire safety

These factors will assist in informing or reviewing FRA Integrated Risk Management Plans and should also be informed by them and will assist LAs in discharging their duty to keep housing conditions under review. In some cases it may assist in developing an evidence base to inform strategic planning if a sample of blocks are inspected jointly to inform an assessment of the risk profile.

A review of previous interventions and the sharing of information about compliance and risk in relation to buildings and regulated entities will also support evidenced based planning.

The Regulators Code recommends that FRAs and LAs ensure clear guidance is available to assist regulated entities to comply with their obligations and to carry out activities in a way that supports those they regulate to comply and grow. It is recommended that in developing strategic approaches to regulation consideration is given to co-producing guidance and undertaking joint engagement events to support housing providers and managing agents to understand their obligations and duties under the Housing Act 2004 and the Fire Safety Order and encourage pro-active compliance.

Considerations for determining the appropriate mechanism for enforcement

The following considerations will help determine which legislation may provide the most effective regulatory tool at a tactical level and this should be read in conjunction with the comparison of powers attached.

In cases where there is considered to be an imminent risk then the FSO is likely to be the most effective legislation to undertake an urgent inspection as the Housing Act requires a minimum of 24 hours notice of entry to be given to all parties with an interest in the premises.

The restrictions on powers of entry under both the Fire Safety Order and the Housing Act 2004 and the associated administrative burdens must be considered when planning joint inspections. It may be advantageous to undertake a preliminary joint inspection with the consent of the owner to determine which regulator is best placed to take action. This would be undertaken prior to the LHA serving of formal notice of entry and although this would prevent the LHA from taking any formal action until the appropriate notice of entry has been given may be a more efficient use of resources than serving notice of entry in cases where the FSO provides the most effective route to regulatory compliance.

The table below sets out a number of considerations which may assist FRS and LAs in determining the most appropriate legislation to use and which agency should lead on any inspections and actions. It is intended as a guide to assist decision making and not a prescriptive approach to which legislation should be used. It is recommended that in considering the most appropriate approach that agencies have regard to outcome being sought, the proportionality of the action being taken and the potential costs and risk to each agency.

Tactical Considerations for enforcement

Issue	FSO	HA	Considerations
The LHA has no enforcement powers (for example because it is the landlord).	Y	N	FRS should lead in all cases where the LA cannot enforce.
A significant number of the flats are not occupied as a 'dwelling' i.e serviced apartments /short term lets.	Y	N	<p>The HA2004 does not apply to commercial residential premises and can only be utilised in relation to 'dwellings' which are or are intended to be used for residential purposes.</p> <p>It may be used where some parts of the premises are occupied as residential dwellings but powers and actions would be restricted to those flats and the common parts.</p>
The make up of the external wall system has not been identified.	Y	Y	<p>The HA2004 can be utilised to request information about the materials in the external wall system but does not impose a requirement on building owners to assess the risks. Although LHAs do have the power to assess the risk in order to determine the hazard rating and may also take samples to assist in determining the materials used. but there is no requirement for the risk from these to be assessed.</p> <p>The FSO can be used to require a suitable and sufficient assessment of the risk to be made.</p> <p>Where the HA2004 is used, the LHA will need to assess the risk. Some LHAs may not have in-house personnel with the appropriate training and expertise in assessing the risks presented by various types of EWS. Where that is the case they should consider bringing in suitable staff from outside; the power to do so is explicit in section 239(8) HA2004 but there is no provision to recover the costs incurred in doing so. The creation of a multi-disciplinary team will usually be the preferred approach and use of the FSO may be more expedient and appropriate in obtaining the required risk assessment.</p>

Issue	FSO	HA	Considerations
The external wall has been identified as containing materials which are not of limited combustibility.	Y	Y	<p>Issues in relation to assessment of the risk are as above.</p> <p>The HA2004 can be utilised to require the owner to remove or reduce the hazard but not to necessitate a change to the evacuation strategy.</p> <p>The FSO can be used to require a change to the evacuation strategy through the requirement to implement appropriate fire safety arrangements.</p>
There are deficiencies in the facilities provided for firefighting.	Y	N	Where there are concerns about provisions within the building for firefighting operations these cannot be addressed under the HA2004 and the FRS should lead.
There are deficiencies identified in the maintenance regime of fire safety provisions e.g fire alarms, smoke control systems, emergency lighting.	Y	N	The HA2004 cannot be used to require a suitable system of testing and maintenance and can only be used to require a repair. The FSO can be used to require a suitable system of maintenance to be implemented.
There is evidence that individual dwellings are not fitted with smoke detection.	N	Y	The HA2004 can be utilised to require the reduction of risk in individual dwellings and / or in rented dwellings the Smoke and Carbon Monoxide Regulations can be utilised.
There is evidence of breaches in the compartmentation between flats.	Y	Y	The FSO applies to the structure of the premises but does not apply to the domestic parts of premises occupied as a single private dwelling and therefore where the risk relates to two or more dwellings but not the common parts then it may be more appropriate to utilise the HA2004 to require a reduction or removal in the risk. This is likely to be relevant where unauthorised alterations have been made in individual dwellings. Where there are widespread breaches in the compartmentation that affects both flats and the means of escape the FSO may be the most appropriate way to address the problem.

Issue	FSO	HA	Considerations
There is evidence of breaches in the compartmentation between flats and the common parts.	Y	Y	Both the HA2004 and the FSO can be utilised to deal with breaches in compartmentation which affect the common parts.
The doors to flats are not appropriate fire resisting doors.	Y	Y	Both pieces of legislation can be utilised in relation to flat doors however consideration should be given to the most expedient and least burdensome enforcement mechanism. In relation to buildings with multiple leasehold interests the administrative burden related to use of HA04 powers is likely to be significant. The number of notices which would be required is a relevant consideration.