

FIRE SAFETY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Fire Safety Bill as brought from the House of Commons on 8 September 2020 (HL Bill 132).

- These Explanatory Notes have been provided by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Fire Safety Bill

- 1 In December 2019, the Government was elected with a manifesto commitment that re-affirmed its intention of ‘implementing and legislating for all the recommendations of the Dame Judith Hackitt Review and the first phase of the independent inquiry’. Both the review and the independent inquiry (the Grenfell Tower public inquiry) were set up as a result of the Grenfell Tower tragedy in June 2017.
- 2 The Queen’s Speech included a commitment to bring forward a Fire Safety Bill, its purpose being to clarify that the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order) applies to external walls (including cladding, balconies and windows) and individual flat entrance doors in multi-occupied residential buildings. This will be of particular interest to building owners, leaseholders or managers for multi-occupied residential buildings who are likely to be the responsible persons and who need to ensure that they have assessed the fire safety risks of the premises for which they are responsible, and have taken the necessary fire precautions as a result of that assessment. The Fire Safety Bill will also affirm Fire and Rescue Authorities have the relevant enforcement powers to hold owners or managers to account.
- 3 It will also complement the existing powers local authorities have to take enforcement action against building owners and managers under the housing health and safety rating system (HHSRS) provided for in the Housing Act 2004 and the Building (Amendment) Regulations 2018 (SI 2018/1230) which came into force on 21 December 2018 and banned the use of combustible materials within the external walls, and certain attachments to the external walls, of any new building at least 18 metres in height where:
 - a. the building contains at least one dwelling;
 - b. the building contains certain residential accommodation for the treatment, care or maintenance of persons; and
 - c. the building contains certain rooms used for residential purposes, including student accommodation and school dormitories.

Including such a building created by a material change of use.

- 4 The Fire Safety Bill will also support the Government’s intended action to introduce secondary legislation to implement the specific recommendations made in the Grenfell Tower Inquiry Phase One Report. The recommendations called for new legal duties on “building owners or managers of high-rise buildings” in relation to inspection and information sharing with the local Fire and Rescue Service. This includes the requirement for building owners or managers to share information with their local Fire and Rescue Service about the design of its external walls and details of the materials from which they are constructed and to undertake regular inspections of individual flat entrance doors. The Government will launch a consultation in Spring 2020 on the Fire Safety Order, which will include proposals for implementing the Grenfell Tower Phase One Report recommendations.

Policy background

- 5 The fire at Grenfell Tower highlighted the need to improve building safety and to ensure that such a tragedy is never repeated.
- 6 In order to speed up the process of improving building safety the Government is committed to taking action, including through legislation. Action taken to date includes:
 - a. In June 2019, the Home Office published a Call for Evidence on the Fire Safety Order,

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inviting views on the application of the Fire Safety Order in England and seeking to gather evidence to inform next steps and ensure high and proportionate standards of fire safety in all regulated premises. This complemented the “Building a Safer Future” consultation, launched simultaneously by the Ministry for Housing, Communities and Local Government, and was the first step in a process to ensure that the Fire Safety Order continues to be fit for purpose. The Home Office intends to publish a summary of responses to the Call for Evidence at the same time as the introduction of this Bill.

- b. The announcement by the Secretary of State for Housing, Communities and Local Government on 20 January 2020 of a new Building Safety Regulator.
- c. The introduction of this Bill, the Fire Safety Bill – to ensure the Fire Safety Order is clear in that it applies to external walls (and anything attached to them which includes cladding and balconies) and flat entrance doors of a multi-occupied residential buildings.
- d. In parallel to the Fire Safety Bill, the Government published the Fire Safety consultation on 20 July, which closes on 12 October. This consultation builds on the information gathered from the Call for Evidence and proposes additional changes to the Fire Safety Order.
- e. The Building Safety Bill will be introduced, which will:
 - i. provide clearer accountability and stronger duties on those responsible for high rise buildings;
 - ii. give residents a stronger voice in the system; and
 - iii. strengthen enforcement and sanctions to deter non-compliance.
- f. The relaunch of the Government’s Fire Kills campaign.

Legal background

- 7 The legislation relating to fire safety in England and Wales is set out across a number of statutes.
- 8 The Fire Safety Order sets out the regulatory regime in all premises, save for those expressly excluded (such as domestic premises (article 6)). The order does apply to common parts of blocks of flats.
- 9 The Order requires responsible persons to carry out (and regularly review) a fire risk assessment and as a result to put in place measures to remove, or reduce, so far as is reasonable, risk from fire or the spread of fire. In this way anyone lawfully on the premises who could be affected by fire (relevant persons) should be protected from that risk.
- 10 The order is enforced by “enforcing authorities” who are defined in article 25. For the purposes of this Bill the relevant authorities are the Fire and Rescue Authorities (as defined in section 1 of the Fire and Rescue Services Act 2004). They enforce against responsible persons (defined in article 3) or those identified in article 5(3) who have control (“duty holders”).
- 11 In domestic premises there are a number of pieces of legislation relating to safety (including fire safety) including:
 - Housing (Health and Safety Rating System) Regulations 2005 (Part 1 of the Housing Act 2005 gives local authorities powers to deal with hazards, including fire hazards, in dwellings and the Regulations provide further details of this regime);
 - Management of Houses in Multiple Occupation (England) Regulations 2006 (which

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include a duty on landlords of HMOs to take safety measures);

- Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (which place duties on landlords to ensure smoke detectors are installed in domestic premises being let);
- Gas Safety (Installation and Use) Regulations 1998 (which include provisions on fire safety of gas appliances, including checks by landlords);
- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (which include a duty on all private landlords in relation to safety of electrical installations);
- Building Regulations 2010 (including as applied by the Building (Approved Inspectors etc) Regulations 2010) which provide the requirements that must be achieved when undertaking building works, including designing and constructing buildings so they inhibit the spread of fire within a building and adequately resist the spread of fire over the walls of the building.

12 This Bill amends article 6 of the Fire Safety Order.

Territorial extent and application

- 13 Clause 3 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 14 The provisions in the Bill extend and apply to England and Wales.
- 15 There is a convention (“the Sewel Convention”) that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. (In relation to Scotland and Wales, this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)
- 16 The provisions in the Fire Safety Bill relate to matters within the legislative competence of Senedd Cymru (the Welsh Parliament). The Welsh Minister has therefore confirmed that she will put the matter before Senedd Cymru for a legislative consent motion in relation to these provisions.
- 17 Scotland has its own legislation in place – Part 3 of the Fire (Scotland) Act 2005.
- 18 Northern Ireland is covered in Part 3 of the Fire and Rescue Services (Northern Ireland) Order 2006 and the Fire Safety Regulations (Northern Ireland) 2010.
- 19 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Premises to which the Fire Safety Order applies

- 20 This clause amends article 6 of the Fire Safety Order 2005. Clause 1(b), which inserts a new paragraph (1A) into article 6, makes clear that the Fire Safety Order applies, when the premise is a building containing two or more sets of domestic premises, to:
- a. the building's structure, external walls and any common parts. This removes any ambiguity in the current Fire Safety Order around whether such parts are covered.
 - b. doors between domestic premises and common parts. This will include flat entrance doors and other doors adjacent to common parts that provide – or line – escape routes from multi-occupied residential buildings.
- 21 Clause 1(b) also inserts new paragraph (1B) to provide further clarity that external walls includes doors or windows in those walls and anything attached to the exterior of those walls and that these will be within scope of the Fire Safety Order. This category will include cladding, insulation, fixings and balconies. These are important clarifications for ensuring that owners or managers (who are usually the 'responsible persons' for multi-occupied residential buildings) include an assessment of risk related to fire and fire spread in respect of these parts of the relevant premises. As a result, such persons will be under a duty to take general fire precautions to ensure the premises are safe for those lawfully there.
- 22 The amendments also affirm that fire and rescue authorities can take enforcement action against responsible persons if they have failed to comply with their duties under the Fire Safety Order in relation to these parts of such premises.

Clause 2: Power to change premises to which the Fire Safety Order applies

- 23 Clause 2(1) provides a delegated power to ensure that the relevant authority can amend the Fire Safety Order, by regulations, to change or clarify the types of premises falling within its scope and also allow for amendments consequential to those changes or clarifications to be made. This will ensure, for example, that any new types of premises can be brought into the scope of the Fire Safety Order relatively quickly, thereby improving fire safety.
- 24 Clause 2(2) defines "relevant authority" who for England is the Secretary of State and for Wales is the Welsh Ministers.
- 25 Clause 2(3) allows for the regulations to amend the provision inserted by this Fire Safety Bill.
- 26 Clause 2(4) makes clear that amendments to premises in the Fire Safety Order may include transitional or saving provisions.
- 27 Clause 2(5) ensures that a consultation must be held with anyone whom the relevant authority considers appropriate before such changes to premises can be enacted.
- 28 Clauses 2(6) to 2(8) states that regulations made under the power in clause 2(1) will be subject to the affirmative resolution procedure whether made by the Secretary of State or by the Welsh Ministers and passed through Senedd Cymru.

Clause 3: Extent, commencement and short title

- 29 Clause 3 provides (as set out above) that the Bill will extend and apply in England and Wales. Clause 3 will come into force on the day the Act is passed however sub-clause 2 allows for operative amendments to be made by way of statutory instrument that allow for the Fire Safety Order to come into force in accordance with regulations made under sub-clause 2(a) &(b) of the Bill (see section on Commencement below).
- 30 Clause 3 states the short title to be the Fire Safety Act 2020.

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Commencement

- 31 Clause 1 in this Bill will be brought into force by means of commencement regulations made by the Secretary of State for premises in England and the Welsh Ministers for premises in Wales enabling the provisions to be brought into effect as is considered appropriate.

Financial implications of the Bill

- 32 This Bill is likely to result in Fire and Rescue Authorities incurring additional enforcement costs. Those Authorities are funded, in part, by grants using money provided by Parliament. A money resolution was required in the House of Commons to approve these additional charges on the public revenue.

Parliamentary approval for financial costs or for charges imposed

- 33 The money resolution was passed by the House of Commons on 29.04.2020.

Compatibility with the European Convention on Human Rights

- 34 Lord Greenhalgh of Fulham, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Fire Safety Bill are compatible with the Convention rights”.

Related documents

- 35 The following documents are relevant to the Bill and can be read at the stated locations:

- New measures to improve building standards – announced by the Secretary of State for Housing on 20 January 2020- <https://www.gov.uk/government/news/new-measures-to-improve-building-safety-standards>
- Government Response to the Grenfell Tower Inquiry – Phase One report - <https://www.gov.uk/government/publications/grenfell-tower-inquiry-phase-1-report-government-response>
- Grenfell Inquiry – Phase One Report - <https://www.grenfelltowerinquiry.org.uk/phase-1-report>
- Re-launch of Fire Kills Campaign - <https://www.gov.uk/government/news/government-relaunches-fire-kills-campaign>
- Fire Safety Consultation - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901820/20200717_FINAL_Fire_Safety_Consultation_Document.pdf

Annex A – Territorial extent and application in the United Kingdom

36 Clauses 1, 2 and 3 apply in their entirety to both England and Wales. It should also be noted that:

- Clause 2(8) states that Senedd Cymru must give their consent to any amending statutory instrument made by the Welsh Ministers.
- Clause 3(2)(b) allows for Welsh Ministers to determine when the changes in the Fire Safety Bill come into effect in Wales.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	Yes	Yes	Yes	Yes (for Wales)
Clause 2	In part	In part	No	No	Yes	Yes	Yes	
Clause 3	In part	In part	No	No	Yes	Yes	Yes	

Minor or consequential effects²

37 Not applicable.

Subject matter and legislative competence of devolved legislatures

38 The provisions of the Bill clarify the scope of the Fire Safety Order and provide a delegated power, which through an affirmative resolution enables different types of premises to be covered in future by way of an amending Statutory Instrument. The management of Fire Safety is a matter within the legislative competence of the Scottish Parliament and Northern Ireland Assembly. Details of equivalent legislation in Scotland and Northern Ireland are set out in the Territorial Extent section of these explanatory notes

39 Fire Safety is a devolved matter in Wales. This Bill makes provision for the changes to the Fire Safety Order to be mirrored in Wales, with the consent of Senedd Cymru through a Legislative Consent Motion.

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

² References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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