



**NFCC**  
National Fire  
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The professional voice of the  
UK Fire & Rescue Service

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House of Commons  
London  
SW1A 0AA

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Sent via email to: [scrutiny@parliament.uk](mailto:scrutiny@parliament.uk)

22 June 2019

To the Public Bill Committee,

### **Call for written evidence: Fire Safety Bill**

Please find attached the National Fire Chiefs Council (NFCC) response to the call for written evidence on the Fire Safety Bill (issued 17 May 2020). NFCC welcomes this opportunity to submit written evidence and would welcome the opportunity to present evidence to the Committee at any planned oral evidence sessions.

### **Role of the National Fire Chiefs Council**

NFCC is the professional voice of the UK fire and rescue services (FRS), and is comprised of a council of every UK chief fire officer. We provide co-ordinated leadership to the UK FRS. In the wake of the fire at Grenfell Tower, it is vital that we use this time to examine the shortcomings that contributed to the terrible events of 14 June 2017.

### **Experience of the Regulatory Reform (Fire Safety) Order 2005**

As the enforcing bodies of the Regulatory Reform (Fire Safety) Order 2005 (the FSO), our members and our staff are well versed in the relevant industry practice and workings of the system and regulations which the Committee will be examining.

As the expert, professional body for the UK FRS sector, the NFCC could assist the Committee in consideration of the proposals being considered within the Fire Safety Bill.

We trust the attached submission is helpful and as above would welcome the opportunity to present evidence at any planned oral evidence session the Committee may hold.

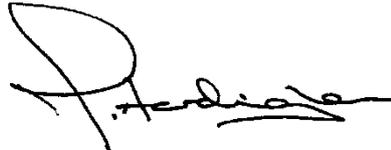
Yours sincerely,

**Roy Wilsher**



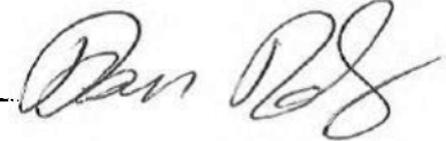
**Chair, National Fire Chiefs  
Council**

**Mark Hardingham**



**NFCC Protection and  
Business Safety  
Committee Chair**

**Dan Daly**



**NFCC Protection Hub  
Manager**

## 1. Introduction

- 1.1. NFCC welcomes the Fire Safety Bill and its intent to provide greater clarity on the additional areas which fall to the Responsible Person (RP) or duty-holder for multi-occupied residential buildings.
- 1.2. Fire and Rescue Services (FRS) have highlighted some issues that in their view as experienced enforcers may arise without some further clarification. Different FRSs have offered us counter interpretations of the Bill as it stands, highlighting the potential for different interpretations of the Bill to emerge.
- 1.3. Whilst this evidence contains the views from the FRS, it is understood that the Regulatory Reform (Fire Safety) Order 2005 (FSO) is a self-compliance regime and so the law needs to provide the tools, ease of understanding and certainty for responsible persons to readily give effect to necessary fire safety measures and improvements without the need for intervention by an enforcing authority.
- 1.4. In an ideal world we would never need to take enforcement action. The further clarifications sought by FRSs are not about what enforcing authorities need – it is about making it clear and unambiguous so responsible persons can fulfil their role and be held to account if they do not. If the role is clear then enforcement, should it be necessary in cases of non-compliance, is a quite simple matter.
- 1.5. NFCC has been working closely the wider FRS and Home Office colleagues since the publication of the Bill to understand these issues further. Whilst the Bill is presented to the Committee without amendment, this close working has identified that possible remedies or solutions may exist either through:
  - guidance; or
  - secondary legislation.
- 1.6. Notwithstanding those opportunities, we have outlined below those matters that we feel could be addressed through amendment to the Bill or the commitment to do so through guidance and or secondary legislation.

## 2. Matters contained within the Bill

### Commencement provisions

- 2.1. As it stands the Bill may be brought into force on different dates for different purposes. On the basis of the Bill being a clarification and not an expansion of scope, it is not clear how it can be clarified on different dates for different buildings.
- 2.2. There is also a substantial risk that any staged approach, such as bringing the Bill in for buildings over a certain height may have damaging implications for historical/ongoing enforcement and/or criminal proceedings against landlords and others by FRSs, consequences of which will most likely impact residents.
- 2.3. Government have already directed responsible persons within the Consolidated Advice Note that building owners should not await further advice or information to act for all premises for buildings of any height - so any attempt at staging may bring regulatory uncertainty and confusion to those it regulates. Some RPs may take this as a direction to stop work previously commenced.

2.4. NFCC strongly suggests that the Bill be brought into force at the same time for all buildings it will apply to, to avoid potential unintended consequences. NFCC have been invited to be part of further work on implementation and welcome the opportunity to help develop guidance and support for how implementation could be managed through a risk based approach.

### **Definitions**

2.5. **Clause 1 introduces some new phrases and terms. NFCC suggests the following terms are defined either through secondary legislation or guidance to meet the Bill's intention of providing clarity:**

#### **A. Building.**

2.6. The consequence of the insertion of paragraph 1A of the Bill into Article 6 of the FSO could be that semi-detached houses and terraced houses are within the scope as they arguably form one building.

2.7. We would not expect that to be the intention of the drafting, as this would create new regulatory burdens for residential occupiers of relatively simple housing, requiring home owners to carry out fire risk assessments which include external walls. The extent to which this term applies to the range of building types should be clearly stated for the avoidance of doubt.

#### **B. Common parts.**

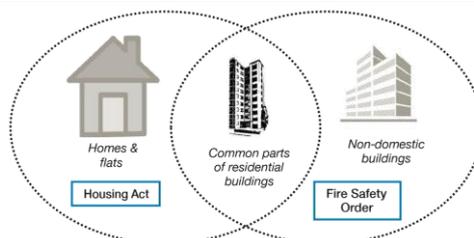
2.8. NFCC welcomes the intent to clarify common parts but holds concerns that introducing the term "common parts" without a definition alongside the definition of domestic premises in Article 2 could lead to further confusion and an additional layer of complexity to the existing interpretations already available.

2.9. There are a number of definitions available across existing legislation. Historically 'common parts' has been used as colloquialism for the entrance halls, corridors and stairways in a block of flats, but this is an incomplete, and in cases unhelpful use, as it calls into question whether it covers lift-motors rooms, service risers, roof voids, other potentially high-risk areas, and those fire safety facilities inside individual dwellings but used in common for the protection of the entire premises such as sprinklers and detection.

2.10. An absence of a definition in the experience of our members creates opportunities for those who may try to game the system. Definitions are given in housing legislation for this reason.

2.11. There are two main frameworks connected to ensuring fire safety in an occupied residential building, the Housing Act 2004, and the current FSO.

2.12. The FSO is primarily designed for non-domestic premises. The application of the FSO relies on a definition of "domestic premises" which includes describing parts "*not used in common*" by the occupants of more than one dwelling. This is a different to the definitions of "common parts" and "residential premises" used in the Housing Act.



Source: Figure 3.8 – Independent Review of Building Regulations and Fire Safety - Interim Report.

- 2.13. The original intent of the application of the FSO to the common parts of blocks of flats was a view that these areas could be regarded as workplaces, to which European Workplace Directive (89/654/EEC) applied. There are some who argue whether the external walls and cladding could therefore be interpreted within the intent as a 'workplace'.
- 2.14. In addition to the above, various other definitions of common parts exist such as in The Health and Safety (Enforcing Authority) Regulations 1998.
- 2.15. In 2009, following the fire at Lakanal House, the Coroner wrote<sup>1</sup> to the Secretary of State for Communities and Local Government. The Coroner outlined that uncertainty remained about the scope of inspection for fire risk assessment purposes and made a recommendation to Government: "to provide **clear guidance on the definition of "common parts"** of buildings containing multiple domestic premises."
- 2.16. In 2017, the Independent Review of Building Regulations and Fire Safety interim report recommended that "the assignment of responsibilities in blocks of flats, where there are boundaries between areas which are the responsibility of residents and those which fall to landlords or owners, **must be clarified.**"
- 2.17. This Bill now concludes that external walls will be considered as common parts within the FSO; this is welcome, as until now the question over whether the FSO applies to external walls has remained a point open to interpretation across the sector, which has never been tested or determined by the courts.

### C. Structure.

- 2.18. The Bill has introduced a possible unique interpretation through the drafting "*the building's structure and external walls and any common parts*". This implies the FSO is being extended to cover the entire internal structural frame of the building, as well as the structure of the external wall.
- 2.19. There is significant case law in landlord and tenant legislation on the term structure. In addition, competing definitions which have been introduced recently such as "external wall" for the purposes of the combustible cladding ban<sup>2</sup> could provide opportunities for other interpretations.
- 2.20. The use of the same definition as exists in tenant legislation may be clear and suitable for dealing with structural fire protection issues throughout residential blocks of flats, however it is not clear from the Bill that the same definition is in fact intended. We

<sup>1</sup> <https://www.lambeth.gov.uk/sites/default/files/ec-letter-to-DCLG-pursuant-to-rule43-28March2013.pdf>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2018/1230/regulation/2/made>

believe the intent is closer to “the building’s structure *comprising of* external walls and any common parts”.

### 3. Other matters arising

3.1. NFCC has been highlighting the need for these clarifications for many years and (subject to the above points) welcomes the intent of the Bill. However, we note this Bill addresses one part of a much larger set of complex issues which need to be resolved.

3.2. It is important not to lose sight of other, barriers to remediation that remain, such as:

- Having products tested (such as via an 8414 test) can be expensive and takes time. For some types of external wall product, there are no test methods currently available.
- Disputes over liability for remediation costs, and in some cases access to funding, with the potential for complex lease arrangements to impact on funding applications.
- The ability to assess the compliance of external wall systems after they are built is extremely difficult, as visual inspection will often not enable identification of the cladding product or its constituent materials:
  - By design, some materials are intended to give the appearance of other products. When viewing high level areas from the ground level, it can be very difficult to distinguish between these types of product and traditional masonry.
  - With the exception of very traditional construction methods, it is virtually impossible without intrusive inspection and sometimes lab testing, to determine the cross section of the wall build up (comprising, cavity barriers, fixings, insulation, cladding framework, etc.)
  - Specification drawings do not necessarily reflect the final wall build up, and particularly materials that were actually installed. Nor will they assist where poor workmanship or substituted components may undermine fire performance (e.g. incorrectly installed cavity barriers).
  - Intrusive inspections, in practice, can only be carried out on a sampling basis, where the area of sample may not conform to the entire wall construction, with some buildings fitted with a jigsaw of differing products.

3.3. It is for these reasons that the compliance and safety of external wall systems with building regulations are designed to be addressed and dealt with at building control stage, and through building control processes (e.g. in operation and maintenance manuals, or handed over for compliance with Regulation 38 of the Building Regulations). The FSO is then primarily a tool for managing the safety of the building during occupation post the building control process.

3.4. Although the Bill clarifies the position over doors between domestic premises and common parts (with the effect of applying to doors which protect the means of escape) we are unsure what mechanism an RP could use to ensure doors are maintained at the right standard or replaced. In many cases the terms of leases do not expressly cover this. In other cases, leases will only deal with issues of maintenance, not improvement or replacement. This means FRSs would have to act directly against each individual flat – e.g. fifty enforcement actions for a block of fifty flats to bring about safety improvements. This would be hugely resource intensive in a way that is impractical and likely to be disproportionate to the risk it seeks to address.

3.5. A clear mechanism is needed to enable fire authorities to enforce against the RP for the whole block, who would then be responsible for enforcing individual leaseholders to keep their front doors at the right standard or replace them. NFCC would be very happy to support work to develop the detail of such a mechanism as this is key to providing clarity and supporting self-compliance with the Order.

### **Scope of the Fire Safety Order**

3.6. Clause 2 provides for further changes to be made to the scope of the FSO and to clarify existing application. NFCC would welcome clarity that this provides sufficient legal power that in future could be relied upon to respond to emerging evidence or events, such as findings from phase 2 of the Grenfell Tower Inquiry. This is not an exhaustive list and clarification is sought on the general principle, examples could include:

- A legal mechanism by which improvements to, or replacement of, flat front doors will be achieved by the RP.
- The installation of additional fire detection and warning systems, evacuation alert systems, or equipment that needs to extend into private dwellings to provide protection to the whole building.
- Retrospective fitting of fire safety measures in the building (e.g. sprinkler systems) as a result of fire risk assessments, Safety Cases as will fall under the Building Safety Bill, or wider changes which may arise in future (such as from the Grenfell Tower Inquiry).
- Adjustment or clarification of what an enforcing authority may require to be notified about by means of an Article 29 alterations notice. Particularly in relation to management processes that support the overall fire safety arrangements and/or fire engineered solutions.

3.7. We hope that assurance can be given either directly or as the result of minor amendment to the Bill that all of the above would be readily achievable.

**For more information, please contact [BuildingSafetyTeam@nationalfirechiefs.org.uk](mailto:BuildingSafetyTeam@nationalfirechiefs.org.uk)**