

Independent Review of Building Regulations and Fire Safety

IOSH response to the Independent Review's call for evidence



Submission

13.10.17



Introduction

The Institution of Occupational Safety and Health (IOSH), the Chartered body for health and safety professionals, responded to the consultation on the Terms of Reference for the Public Inquiry into the Grenfell Tower fire and is pleased to also contribute to this important [call for evidence](#) to the Independent Review of Building Regulations and Fire Safety.

In the submission that follows, we provide comments on areas highlighted in the call for evidence, based on desk-top research, IOSH positions and publicly available information sources, and then we close with further reading and information about IOSH.

IOSH summary position

IOSH believes the Public Inquiry, Independent Review and investigations into the Grenfell Tower fire should cover the immediate and root causes of the fire and its spread, the failure to safely evacuate all residents and the wider lessons to be learned.

This should include how the UK has arrived at a situation in which high-rise buildings are clad in materials that have subsequently failed Government fire safety tests; the risk levels posed; and how this should be addressed to protect human life.

The Independent Review should examine any systemic weaknesses and areas for improvement in the UK's **fire-risk competence, management and regulation** that this tragic event has revealed. IOSH would highlight the following areas for examination regarding building regulations and fire safety:

- a) Whether there are any systemic failures in the adequacy, implementation and enforcement of relevant fire, health and safety or building regulations
- b) The adequacy of the overall fire safety competency requirements for those with responsibilities and governance and decision-making roles
- c) How the roles, responsibilities and interactions of the various duty holders were understood, coordinated and delivered
- d) The adequacy of communication and engagement between duty holders and residents
- e) The adequacy and application of relevant fire safety-related standards, such as for testing cladding
- f) Whether the UK's passive approach (compartmentation) for high-rises is sufficient and whether the active approach used in other countries should also be adopted
- g) Why international lessons on fire safety have not been applied in the UK, such as those from the [Lacrosse Tower](#) fire and how this can be ensured in future
- h) The adequacy of the Construction (Design and Management) Regulations 2015 ([CDM 2015](#)) cross-references to RR(FS)O, ADB and the [Equality Act 2010](#) to ensure future use of buildings will be safe

IOSH believes that the Independent Review could usefully make recommendations on improving the UK's overall approach to fire risk management, including:

- a) The adequacy and clarity of relevant regulation, guidance and enforcement
- b) The competence requirements for those directly and indirectly associated with fire safety management
- c) The application of passive and active fire risk management techniques
- d) The standards for testing / approving building materials and methods
- e) The level of compliance with legal duties including Section 3 of the Health and Safety at Work etc. Act 1974
- f) How the roles, responsibilities and interactions of the various duty holders can be better understood, coordinated and delivered

IOSH responses to the call for evidence areas

1. The overarching legal requirements

Where specifically do you think there are gaps, inconsistencies and/or overlaps (including between different parts of the legislation and guidance)?

IOSH would highlight the following for attention during this Independent Review:

- a) The Building Regulations 2010, Fire Safety, Approved Document B ([here](#))
 - b) The Regulatory Reform (Fire Safety) Order 2005 ([here](#))
 - c) The Construction (Design and Management) Regulations 2015 ([here](#))
 - d) The Housing Health and Safety Rating System (England) Regulations 2005 ([here](#))
 - e) The Health and Safety at Work etc, Act 1974, Section 3 ([here](#))
 - f) London Building Acts ([here](#))
- a) In our response to the Terms of Reference consultation for the Grenfell Tower Fire Public Inquiry, IOSH has highlighted the need to complete a review of [The Building Regulations 2010, Approved Document B](#) (ADB), in line with the Coroner's recommendations following the [Lakanal House](#) fire. This includes the comment that "...AD B is a most difficult document to use. Further, it is necessary to refer to additional documents in order to find an answer to relatively straightforward questions concerning the fire protection properties of materials to be incorporated into the fabric of the building."

The letter from Frances Kirkham CBE to the Secretary of State for Communities and Local Government (28 March 2013) goes on to say "It is recommended that your Department review AD B to ensure that it

- *provides clear guidance in relation to Regulation B4 of the Building Regulation, with particular regard to the spread of fire over the external envelope of the building and the circumstances in which attention should be paid to whether proposed work might reduce existing fire protection*
- *is expressed in words and adopts a format which are intelligible to the wide range of people and bodies engaged in construction, maintenance and refurbishment of buildings, and not just to professionals who may already have a depth of knowledge of building regulations and building control matters*
- *provides guidance which is of assistance to those involved in maintenance or refurbishment of older housing stock, and not only those involved in design and construction of new buildings.”*

b) The Regulatory Reform (Fire Safety) Order 2005 ([here](#))

The Regulatory Reform (Fire Safety) Order 2005 (RR(FS)O) review by BIS in 2015, found that *“Guidance documents in England were described by some as being confusing and conflicting...”* It also highlights concerns from fire protection officers and safety consultants that businesses were not aware of their responsibilities under RR(FS)O; questions about the competency of some commercially provided fire risk assessments and some fire protection officers; and reluctance by some Fire and Rescue Authorities to give advice.

c) The Construction (Design and Management) Regulations 2015 (CDM) – in the IOSH response to the HSE consultation on CDM (CD261), we made three specific references to fire safety, which we do not feel were subsequently fully reflected in the revised regulations, these were:

- *“...to ensure, so far as is reasonably practicable, that the design of structures meets the relevant health and safety requirements e.g. as contained in Regulatory Reform (Fire Safety) Order; Workplace (Health, Safety and Welfare) Regulations; Building Regulations; and Equality Act.”*
- *“...our members expressed the view that, in general, designers have little knowledge of on-site activities and the principles of prevention (managing health, safety and fire risk)...”*
- *“...additional guidance on health and safety competence and the future use of structures will also be needed.”*

d) The Communities and Local Government Select Committee report on the private rented sector considered the operation of the Housing Health and Safety Rating Scheme in [2013](#) and identified the following weaknesses:

“Chapter 2 of the 2013 Communities and Local Government Select Committee report on The Private Rented Sector considered the operation of the HHSRS.¹⁶ A survey of private landlords carried out by DCLG in 2010 found that 85% of landlords had not heard of the HHSRS;¹⁷ the Committee concluded that there was also likely to be a low level of awareness amongst tenants. Some evidence submitted to the Committee raised concerns around the complexity of the HHSRS and the fact that there is limited understanding of its operation outside of professionals in the field.

There was a call from some respondents for a new approach to assessing the quality of privately rented housing but no general agreement on what alternative approach to adopt.”

- e) IOSH believes that the Health and Safety at Work etc. Act 1974, Section 3 (below), has wide-ranging application to those whose work activities and decisions can impact fire prevention and public safety.

“General duties of employers and self-employed to persons other than their employees.

(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person who conducts an undertaking of a prescribed description to conduct the undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(2A) A description of undertaking included in regulations under subsection (2) may be framed by reference to—

(a) the type of activities carried out by the undertaking, where those activities are carried out or any other feature of the undertaking;

(b) whether persons who may be affected by the conduct of the undertaking, other than the self-employed person (or his employees), may thereby be exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.”

- f) The impact assessment by the Department for Communities and Local Government (DCLG) Sustainable Buildings Division (IA number 37) in 2011 did not plan for a post implementation review (PIR). This was because they deemed that the repeal of Local Building Acts removed ‘duplicate requirements’. We suggest it would be beneficial to revisit this decision and to conduct a PIR to check for any unintended consequences (‘Removing inconsistencies in local fire protection standards’, impact assessment No. 37, [June 2011](#)).

What changes would be necessary to address these and what are the benefits of doing so?

Depending on the findings of this Independent Review, we would anticipate appropriate changes could include to:

- a) Simplify and clarify Approved Document B
- b) Improve awareness and compliance with The Regulatory Reform (Fire Safety) Order 2005 (RR(FS)O)
- c) Strengthen CDM2015 regarding fire safety of constructions and completed building and refurbishment work
- d) Improve and increase awareness and enforcement of The Housing Health and Safety Rating System (England) Regulations 2005
- e) Raise awareness of the Health and Safety at Work etc, Act 1974, Section 3 duties among all those taking fire-safety-related decisions
- f) Conduct a port-implementation review of the effects of repealing section 20 of the London Building Acts

IOSH believes that improved clarity, awareness and enforcement would be beneficial and would increase compliance and potentially ensure more investment in effective fire safety risk management – saving lives and preventing losses.

2. Roles and responsibilities

Are the roles, responsibilities and accountabilities of different individuals (in relation to adhering to fire safety requirements or assessing compliance) at each key stage of the building process clear, effective and timely?

IOSH believes that any weaknesses in the regulations and guidance (including those identified above) will affect clarity about roles and responsibilities. We would particularly welcome review of the responsibilities of duty holders regarding ‘end users’ of constructions and completed buildings and refurbishment work, as included in our CDM response in 2014 (see above), to ensure that ‘compartmentation’ is not breached. Such breaches may be out of plain sight e.g. above ceilings or in ducts and may be missed by those with insufficient competence.

We note that Frances Kirkham (Lakanal House Coroner) recommended ‘consolidated national guidance’ so that breaches of compartmentation are considered as part of the risk assessment. Her letter also sought clear Government guidance on:

- *“the definition of “common parts” of buildings containing multiple domestic premises”*
- *“inspection of a maisonette or flat which has been modified internally to determine whether compartmentation has been breached”*

- *“inspection of a sample of flats or maisonettes to identify possible breaches of the compartment.”*

We are also aware that the review of RR(FS)O conducted by BIS in [2013](#) raised issues regarding the role of Fire and Rescue Authorities. The findings included:

- *“Approaches to enforcement and engagement vary across the country – making the role of the fire and rescue authority confusing to business.”*
- *“Businesses reported significant inconsistencies in enforcement decisions.”*
- *“Businesses and fire officers reported confusion and inconsistency in the treatment of premises in the ‘supported living’ sector.”*
- *“Enforcement notices are sometimes vague – leaving businesses unsure what remedial action is required of them – and the extent to which notices contain advice varies widely.”*

Concerningly, it was also reported that *“There seems to be a widely held view amongst fire protection officers and safety consultants that many small businesses are not aware of their specific responsibilities under the changes made to the legislation through the Fire Safety Order 2005.”*

3. Competencies of key players

What evidence is there that those with responsibility for demonstrating compliance (with building regulations, housing & fire safety requirements) at various life cycle stages of a building and assessing compliance, are appropriately trained, accredited and resourced?

IOSH is aware that the review of RR(FS)O by BIS identified a number of weaknesses regarding fire safety competence, these included:

- *“whilst fire protection teams may have received training locally, this is not to a national standard or qualification; and individuals often don’t have experience of working with companies in a regulatory role.”*
- Also concerning was the finding that fire protection officers and industry specialists told researchers *“...that the competency of some of those carrying out risk assessments on a commercial basis is questionable and that until recently there has been no national standard available for them to operate to.”*
- The review report also found that *“A number of fire industry professionals nevertheless felt there was a good case for certification and accreditation.”*
- In terms of Principal Designers / Designers and CDM, IOSH raised the importance of designing-in fire safety in our [response](#) to the CDM consultation in 2014. This will include application of appropriate standards, such as [BS 9991](#) and the passing on of information at building handover.

If gaps exist, how can they be addressed and what would be the benefits of doing so?

Where gaps are identified, IOSH believes they should be addressed by making it easier for duty holders to identify fire safety competence in those they engage. Both [IOSH](#) and the [Fire Sector Federation](#) have highlighted fire safety competence as a key area of investigation for the Grenfell Tower Public Inquiry and as essential for effective fire risk management.

It might also be useful to revisit the ability of Fire and Rescue Authorities to charge for advice services, given the BIS review of RR(FS)O finding that few of them (if any) do so.

4. Enforcement and sanctions

Is the current checking and inspection regime adequately backed up through enforcement and sanctions and where does the system fail to do so? Are changes required to address this and what would be the benefits of doing so?

As highlighted under 'roles and responsibilities', RR(FS)O BIS review indicated not all Fire and Rescue Authorities offer the same services:

- *“Approaches to enforcement and engagement vary across the country – making the role of the fire and rescue authority confusing to business.”*
- *“Businesses reported significant inconsistencies in enforcement decisions.”*
- *“Businesses and fire officers reported confusion and inconsistency in the treatment of premises in the ‘supported living’ sector.”*
- *“Enforcement notices are sometimes vague – leaving businesses unsure what remedial action is required of them – and the extent to which notices contain advice varies widely.”*

As the regulatory framework provides for 'dual enforcement' between Local Housing Authorities (under the Housing Act 2004) and the Fire and Rescue Authorities (under RR(FS)O), the LACORS [guidance](#) emphasises the need for “*consistent and coherent joint working*”. The Independent Review team may wish to evaluate the efficacy of the 'protocol' that is designed to help ensure this.

IOSH notes that the Government has recently introduced a new inspection regime for Fire and Rescue Authorities, which could help bring consistency. Praising the bravery and skill of firefighters and emergency responders at Grenfell Tower, Secretary of State for the Home Department, Amber Rudd MP [announced](#) in July 2017, a newly expanded Her Majesty's Inspectorate of Constabulary, rebranded as Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services. She also announced a National Fire Chiefs Council will be established and that a body with responsibility for setting professional standards for the fire and rescue services is planned.

We also note that figures for fire audits in England are [given](#) in the Home Office's '*Fires in purpose-built flats, England, April 2009 to March 2017 – an ad hoc statistical release*', are as follows:

Table 4.1 Fire safety audits, England, 2009/10 to 2015/16

	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Number of fire safety audits	77,532	84,575	81,998	75,543	67,266	58,827	63,201

Source: Table FIRE1202.

Table 4.2 Fire safety audits on purpose-built flats with 4 storeys or more, England, 2009/10 to 2015/16

	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Number of fire safety audits, purpose built flats, 4 storeys or more	2,944	4,023	3,188	3,149	3,925	2,872	3,534

Source: Further breakdown of Table FIRE1202.

We believe it would be helpful if the Independent Review established what proportion of relevant premises undergo fire safety audits, the quality of the audits and the actions taken as a result of them.

In its October 2017 [Parliamentary Bulletin](#), the Fire Brigades Union has highlighted that there has been a 40% fall in the number of fire safety inspectors in England and Wales over the last 20 years, which is clearly concerning given their important role.

5. Tenants and residents voice in the current system

Is there an effective means for tenants and other residents to raise concerns about the fire safety of their buildings and to receive feedback? Where might changes be required to ensure tenants'/residents' voices on fire safety can be heard in the future?

IOSH notes that media [reports](#) suggest that residents' fire safety concerns were not addressed in Grenfell Tower. This will need to be investigated as part of the Public Inquiry and it would also be helpful to ascertain whether there are similar situations elsewhere.

Specifically, we note that the '[list of issues](#)' for the Public Inquiry into the Grenfell Tower fire includes examination of communications with residents, and in particular:

- (a) *What system was there, if any, for residents to express their concerns and views about fire safety?*
- (b) *What channels of communication did it provide?*
- (c) *Was there a formal system for recording concerns and addressing them?*
- (d) *What concerns, warnings and other statements were expressed about the fire safety of Grenfell Tower by its residents or any other person before, at the time of or after the recent renovations?*
- (e) *How and to whom were any such complaints expressed?*
- (f) *What was done in response to such expressed concerns?*

(g) *What provisions, if any, were put in place to ensure that those with language or other special needs could send and receive communications to and from the TMO and the Council about matters of fire safety or safety more generally?*

6. Quality assurance and testing materials

Does the way building components are safety checked, certified and marketed in relation to building regulations requirements need to change, in particular, where do you think there are weaknesses / gaps?

Quality assurance in respect to testing materials is not our area of expertise, however, it is apparent that there has been widespread use of high-rise building cladding that has recently failed both ‘individual component’ and ‘whole system’ fire safety testing – the system clearly needs to be urgently reviewed.

The Secretary of State (SoS) for Communities and Local Government, Sajid Javid MP, made a [statement](#) in the House of Commons on Grenfell Tower and Building Safety on 5 September 2017, in which he reported on ‘whole system testing’ and highlighted the establishment of the ‘Industry Response Group’. In oral evidence to DCLG committee on 11 October 2017, the SoS said the number of towers that had failed the ‘whole system’ test is now at 260 (see [here](#), at 16:46:55).

7. Differentiation within the current regulatory system

What would be the advantages/disadvantages of creating more differentiation in the regulatory system between high-rise multi occupancy residential buildings and other less complex types of residential/non-residential buildings?

IOSH advocates that all high-rises have robust fire safety management and strengthening of public policy in this area would include:

- Consideration of mandatory accreditation of fire risk assessors for all high-rises
- Consideration of mandatory retro-fitting of sprinklers for all high-rises

In terms of differentiating residential high-rises, advantages could be stricter, more robust fire safety for high-rise residential buildings, which could help prevent multiple fatalities and serious injury / illness, including post-traumatic stress. It could also mean that more was invested in fire prevention in such buildings. However, disadvantages could be wrongly implying that non-residential high-rises were not a fire risk. IOSH believes that all high-rises should be covered by effective fire safety regulation and enforcement.

8. International comparisons

What examples exist from outside England of good practice in regulatory systems that aim to ensure fire safety in similar buildings? What aspects should be specifically considered and why?

IOSH would highlight good practice examples outside England as including:

- Scotland – post-Irvine fire (1999) ([here](#))
- Australia – post-Lacrosse fire (2014) ([here](#))

IOSH believes the particular aspects of fire safety that should be considered are that combustible cladding should not be used on the external walls of high-rise towers (Scotland now requires that external cladding ‘inhibits’ fire spread and Australia is considering banning importation of combustible aluminium composite panels, post-Lacrosse fire); and sprinklers should also be installed, as found beneficial in the Lacrosse fire.

Specifically, the Building (Scotland) Act 2003 introduced the Building (Scotland) Regulations 2004 which came into force on 1 May 2005. They include the mandatory regulation: *"Every building must be designed and constructed in such a way that in the event of an outbreak of fire within the building, or from an external source, the spread of fire on the external walls of the building is inhibited."* For more about this, see BBC Scotland [article](#), 26 June 2017.

Further reading

1. The Building Regulations 2010, Fire Safety, Approved Document B
www.gov.uk/government/uploads/system/uploads/attachment_data/file/485420/BR_PDF_AD_B1_2013.pdf
2. The Regulatory Reform (Fire Safety) Order 2005
www.legislation.gov.uk/uksi/2005/1541/pdfs/uksi_20051541_en.pdf
3. The Construction (Design and Management) Regulations 2015
www.legislation.gov.uk/uksi/2015/51/pdfs/uksi_20150051_en.pdf
4. London Building Acts www.legislation.gov.uk/ukla/1939/97/pdfs/ukla_19390097_en.pdf
5. The Housing Health and Safety Rating System (England) Regulations 2005
www.legislation.gov.uk/uksi/2005/3208/pdfs/uksi_20053208_en.pdf
6. House of Commons. Briefing Paper 01917, Housing Health and Safety Rating System, May 2016
<http://researchbriefings.files.parliament.uk/documents/SN01917/SN01917.pdf>
7. The Health and Safety at Work etc, Act 1974, Section 3
www.legislation.gov.uk/ukpga/1974/37/pdfs/ukpga_19740037_en.pdf
8. BIS. Focus on enforcement regulatory review: Enforcement of The Regulatory Reform (Fire Safety) Order 2005. BIS: London, 2013
www.gov.uk/government/uploads/system/uploads/attachment_data/file/226938/bis-13-1080-focus-on-enforcement-reviews-of-regulatory-reform-fire-safety-order-2005.pdf
9. London Fire Brigade. Review of The Regulatory Reform (Fire Safety) Order 2005. LFB, 2016
www.ifsecglobal.com/the-regulatory-reform-fire-safety-order-2005-insights-from-the-forthcoming-lfb-review/
10. IOSH. IOSH response to the consultation on The Construction (Design and Management) Regulations 2007 (CD261). HSE: 2014
www.iosh.co.uk/~media/Documents/MYIOSH/Consultations/IOSH-response-to-CDM-2015-consultation.pdf
11. Grenfell Tower Fire Public Inquiry – List of issues. 2017 www.grenfelltowerinquiry.org.uk/wp-content/uploads/2017/08/List-of-issues-to-be-investigated.pdf
12. Fire Risk Assessment Competency Council – a guide to choosing a competent fire risk assessor. 2014 <http://www.cfoa.org.uk/download/58604>
13. The Chief Fire Officers Association competency framework www.cfoa.org.uk/download/50452
14. LACORS. Housing – Fire Safety: Guidance on fire safety provisions for certain types of existing housing. 2008.
http://www.cieh.org/library/Knowledge/Housing/National_fire_safety_guidance_08.pdf
15. Building (Scotland) Act 2003 www.legislation.gov.uk/asp/2003/8/pdfs/asp_20030008_en.pdf
16. The Building (Scotland) Regulations 2004
www.legislation.gov.uk/ssi/2004/406/pdfs/ssi_20040406_en.pdf

About IOSH

Founded in 1945, the Institution of Occupational Safety and Health (IOSH) is the largest body for health and safety professionals in the world, with around 46,000 members in over 120 countries, including over 13,000 Chartered Safety and Health Practitioners. Incorporated by Royal Charter, IOSH is a registered charity, and an ILO international NGO. The IOSH vision is:

“A safe and healthy world of work”

The Institution steers the profession, providing impartial, authoritative, free guidance. Regularly consulted by Government and other bodies, IOSH is a founding member to UK, European and International professional body networks. IOSH has an active [research and development](#) fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well as other free on-line tools and guides, including resources for business start-ups; an occupational health toolkit; and a risk management tool for small firms.

IOSH has 41 Branches worldwide, including the Caribbean, Hong Kong, Isle of Man, Oman, Qatar, the Republic of Ireland, Singapore and UAE, 17 special interest groups covering aviation and aerospace; communications and media; construction; consultancy; education; environment; financial services; fire risk management; food and drink; hazardous industries; health and social care; offshore; public services; railways; retail and distribution; rural industries; and sports grounds and events. IOSH members work at both strategic and operational levels across all employment sectors. IOSH accredited trainers deliver health and safety awareness training to all levels of the workforce from shop floor to managers and directors, through a professional training network of more than 2,000 organisations. We issue around 180,000 certificates per year.

For more about IOSH, our members and our work, please visit www.iosh.com. Our new five-year strategy can be viewed at www.ioshwork2022.com.

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