



How Fire Safety Standards are currently Set, Implemented, and Enforced in Residential Accommodation: The aftermath of Grenfell Tower

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The RLA provides support and advice to members, and seeks to raise standards in the PRS through our code of conduct, training and accreditation and the provision of guidance and updates on legislation affecting the sector. Many of the RLA's resources are available free to non-member landlords and tenants.

The association campaigns to improve the PRS for both landlords and tenants, engaging with policymakers at all levels of Government, to support our mission of making renting better.

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Executive Summary

This report sets out how fire safety standards are set implemented (i.e. complied with) and enforced in mainstream residential accommodation across all tenures, with a particular focus on the private rented sector. There are various legislative codes applicable, depending on the type of property, but only one, the provisions of Part 1 of the Housing Act 2004 in combination with the Housing Health and Safety Rating System (HHSRS) is universal. The Regulatory Reform Fire Safety Order (FSO) applies only to the common parts of multi occupied buildings such as blocks of flats. In the private rented sector larger houses in multiple occupation (HMOs) are subject to licensing which addresses fire safety, as well as the HMO Management Regulations which apply to all HMOs. Minimum standards regarding fire alarms are set for rented accommodation but only in England. Somewhat confusingly guidance recommends more extensive provision in certain types of property. The Building Regulations play a key role in setting standards but only in relation to new build renovations and alterations, as well as change of use such as from flats to houses and vice versa. The first part of this report details the scope of these various legislative codes and allied requirements such as those around gas safety, electrical safety and furniture and furnishings, the last of which only applies to the private rented sector.

As such, these legislative codes do not normally set prescriptive standards saying what has to be done with a particular property. The notable exception to this is HMO licensing. Rather, what should be done is generally correctly left to guidance and the next section of the report surveys the voluminous guidance governing fire safety in residential accommodation. This focuses in particular on the LACORS Fire Safety Guidance for Existing Buildings and the LGA Guidance for Purpose Built Blocks of Flats, as well as Approved Document B under the Building Regulations. The role of risk assessments under guidance for both existing buildings and purpose-built blocks of flats is examined. The report also looks at the role that local guidance plays. Who is responsible for implementation is identified in outline, but detailed consideration of this aspect is reserved for a companion report.

Having identified both applicable legislative codes and guidance, the report moves onto identify which legislative provisions and which guidance is applicable across different property types, including single dwellings, individual single flats, flats in multiple occupation, purpose built blocks of flats, converted flats, shared houses and bedsits. Those cases where compulsory standards are laid down are identified and the building regulations are looked at.

In relation to each property type the report also sets out how implementation is achieved, that is to say what are the factors to ensure that standards, whether set by legislation or guidance, are complied with.

From all of this, the report pulls together conclusions as to how one can try to make sense of a myriad of rules and regulations, coupled with voluminous guidance. Because of this, we highlight the importance of both the LACORS Guidance and the LGA Guidance for Purpose Built Blocks of Flats. Gaps are identified but the report seeks to demonstrate that generally speaking adherence to one or other set of guidance should in most of cases produce an outcome which ensures sufficient fire precautions are provided without the need for higher standards. However, this is subject to the important caveat that regulation on fire safety needs urgent re-examination in the case of high rise buildings (over 18 metres in height).

We identify problems including the disapplication of the Fire Safety Order provisions in cases where buildings are subject to HMO licensing, although these are, relatively speaking, few and far between. We also highlight the issues around implementation in multi owned properties such as blocks of flats where the divided responsibilities due to the drafting of the Fire Safety Order can lead to uncertainties and a lack of overall focus on the fire safety issues in the building as a whole. As a potential solution, we suggest the need for a fire safety compliance code superimposed on existing leasehold/tenancy arrangements. Deliberately we do not generally speaking seek to put forward solutions in this report.

The report demonstrates the overlaps and gaps but, above all, the sheer complexity surrounding both the legislative codes and the guidance. There is then the issue of local guidance which is of different coverage and quality, adding to the confusion. The report points out that risk assessments are only legally required in certain parts of certain types of buildings. HMO licensing is an added layer where it applies. All of this is in the context of the violent swing which took place when responsibility for commercial premises was transferred to individual building controllers away from the Fire Service. Two parallel legislative codes were introduced at that time and effectively it was a case that “never should the twain meet”. They were developed in parallel and the only links are certain obligations of consultation between the respective enforcement authorities, local authorities and fire and rescue authorities. Building control is an important component but only applicable when buildings are constructed or subsequently modified. The tragic circumstances of Grenfell Tower have now raised a need to revisit and re-evaluate this whole edifice with a view to simplification as well as better implementation and enforcement.

1. Introduction

1.1 Purpose of this report

In the aftermath of the horrendous fire at Grenfell Tower we have prepared this report to provide a detailed explanation of how Fire Safety Standards are set, implemented, and enforced in residential accommodation of all types, especially existing buildings, and all tenures but with a focus on the private rented sector. We look at the buildings themselves only and not their contents, although mentioning for the sake of completeness regulations which are applicable to furniture and appliances.

Setting standards is about determining which precautions need to be taken to ensure adequate protection, whether these are statutory requirements or based on guidance. Setting standards extends to any relevant statutory duty in relation to the desired outcomes but, here, there are several different provisions dependant on which of the legislative codes applies, without their being any universal approach.

Implementing standards is seeing that they are followed in practice i.e. it is about compliance. Ways of doing this include legally enforceable prescriptive standards as a means of seeing that they are implemented. Alternatively, there is the risk assessment approach to help determine what needs to be done. Prior approval to work may be needed, e.g. in relation to proposed building works or alterations, and this is key to implementing building control. At the end of the day in a free society compliance must very much depend on willingness to comply, i.e. good practice. Implementation is also about the circumstances in which it is appropriate to depart from the norm especially as flexibility is essential to address the different types of property and residents which will inevitably be encountered. This includes cases where it is permissible to adopt a different solution which is an issue at the heart of the Grenfell Tower disaster. Implementation includes ensuring that once provided precautions are maintained, as well as addressing what happens when alterations are carried out. Again, this is key to what happened at Grenfell Tower.

Enforcement depends on legal sanctions but, importantly, it also needs effective systems of inspection and audit. The knowledge that there is an effective system of enforcement plays an important part in encouraging implementation through voluntary co-operation.

For multi occupied property, particularly flats, along with those properties where more than one person is responsible for taking precautions such as rental property, you require a proper legal framework to regulate the different relationships within the building to promote co-operation to achieve the provision of satisfactory fire precautions.

The question of who is responsible for compliance is dealt with by us in a separate report.

Leaving aside high-rise blocks which clearly need a radical re-appraisal, we believe that so far as standards themselves are concerned that these are sufficient but,

undoubtedly, a great deal more needs to be done in relation to effective implementation and enforcement. The focus should not just be on rental properties because, with the exception of flats, owner/occupied properties are left largely untouched, beyond initial requirements for new building work under building regulations. In this report, however, we do not propose measures for reform in this report: rather we intend to examine the current situation in order to make sense of a great deal of complexity and to identify issues for consideration. Largely, we look simply at the statutory framework, although in the leasehold field often lack of effective lease provisions are a further concern. We do suggest some solutions to help with a better

understanding of the complexities and uncertainties of the current situation and for improvement around leasehold aspects.

1.2 Background

When it comes to legislation and guidance around fire safety in residential accommodation, you would be forgiven if you thought you were entering an impenetrable jungle. The dreadful events at Grenfell Tower have brought this issue to the fore and fire safety legislation and guidance in the private rented sector will now come under new scrutiny. The Residential Landlords Association (RLA) has been highlighting the issues around the complexity of fire safety legislation and guidance since the present system was introduced from 2004 onwards. Some improvements have taken place, not least because of concerns raised by the RLA, but the fundamental problem remains in that there is no single comprehensive code, nor guidance, relating to residential accommodation to help landlords, whether public or private, to protect their tenants and residents. Requirements in the private rented sector are already more onerous than those which apply in the owner/occupied or social rented sectors.

It is positive to note, that up until now, the statistics have shown that the number of fatal casualties and incidents as a result of accidental dwelling fires has decreased year on year, but as always one is too many and more needs to be done. As a result of Grenfell Tower, the government has commissioned a review into the fire and the current legislation and standards. We have therefore prepared this report to demonstrate the current complexities. However, although the approach towards buildings of over 6 storeys urgently needs re-thinking, there is no reason to suggest that, provided it is adhered to, the current guidance for existing buildings below this height is not sufficient. Rather, there does need to be greater attention paid to implementing standards, ensuring standards are kept up, and enforcement. For these lower height residential buildings, it is also more about simplification so that these existing standards are better understood.

In 2004 and 2005 there was a fundamental shift in relation to fire safety. Prior to this there had been limited requirements regarding fire safety in the case of residential

accommodation. For commercial premises, the risk assessment approach was adopted in 2005 in place of the previous system of fire certification under which the Fire Service took responsibility for inspecting and approving fire safety arrangements in many of these properties. Essentially however this earlier certification system was a static system in that, once the precautions at a particular property were approved and implemented, no updating took place unless and until alterations were made to the premises concerned. The changes in the 2000s led to the adoption of a more dynamic approach under which precautions have to be kept under review and upgraded if appropriate but the Fire Service purely became an auditor. Instead full responsibility was cast on whoever controlled the premises. This has meant that they have in turn had to buy in professional advice. Often this has meant that there are conflicting approaches leaving those responsible uncertain as to what they need to do to discharge their legal responsibilities.

Special provisions apply in the case of buildings exceeding 18 metres in height, usually more than six storeys. These go to the heart of the Grenfell Tower disaster and the worries which now surround high rise blocks of flats in particular.

In this report, we look at the abundance of lengthy guidance across a number of different documents and the differing legislative provisions which may apply depending upon the type of residential property involved which often overlap. Throughout this report we demonstrate how complex this issue has been made, coupled with a lack of clarity and a great deal of uncertainty, especially as landlords are unable to obtain the assurance that they want that they are compliant. What this means is that landlords can be judged with the luxury of hindsight.

Unless otherwise stated this report only focuses on legislation and standards that applies to both England and Wales (but not the remainder of the UK).

1.3 Key Conclusions for Landlords

Identifying the fundamentals as regards fire safety for privately rented accommodation is far from easy. Our analysis of what private landlords need to do is as follows:

- The Smoke Alarm Regulations apply requiring minimum provision of smoke alarms and a detector on each floor (or equivalent licensing conditions where licensing is applicable) and for these to be tested on the day the property is let.
- Landlords should follow the LACORS Guidance applicable to the property in question (assuming the property is no more than six storeys high). This Guidance applies to houses, shared houses, bedsits, converted blocks of flats (unless compliant with modern building regulations) and back to back houses. This Guidance also deals with individual flats in multiple occupation even if they are in blocks which fall within the next bullet point.

- If residential accommodation is a purpose-built block of flats or a converted block which complies with modern building regulations (1991 or later) then landlords should follow the LGA Purpose Built Blocks of Flats Guidance. This includes guidance for individual flats within these blocks. The Fire Safety Order applies to these blocks.
- Any relevant local guidance should be followed.
- However, learning lessons from the Grenfell Tower tragedy, buildings in excess of 18 metres in height (six storeys) require radical re-evaluation.
- Where the Fire Safety Order (FSO) applies because there are common parts in multi occupied blocks including bedsits but not shared houses (so long as these are let out under a single tenancy of the whole property) you must also carry out a fire risk assessment to comply with the FSO or arrange for one to be undertaken by a suitable professional. If you are in control of the common parts a landlord must comply with the general fire safety duty by carrying out the required precautions as provided for under the Order. The outcome for the risk assessment must be implemented. A competent person must be appointed to assist with implementation. The risk assessment must be kept under regular review.
- Additionally, if a privately rented property has an HMO or Selective licence, then the landlord as licence holder needs to comply with the licence conditions.
- If the property is an HMO (licensable or not) then the landlord as manager must comply with the HMO Management Regulations.
- Where building work is carried out that requires compliance with Building Regulations then these must be followed. Particular care needs to be taken not to adversely affect the existing fire precautions when alterations are carried out to ensure compliance with Building Regulations. Approved Document B contains the relevant guidance.
- A Landlord, must also comply with his/her responsibilities to provide safe electrical appliances (where you agree to provide these), ensure that any furniture or furnishings which the landlord provides is fire resistant and complies with the Furniture and Furnishings Fire Safety Regulations, and that the gas installations are safe and that gas appliances provided by the landlord are checked annually. Under the tenancy agreement it will be the landlord's legal responsibility to ensure that the electrical installations and gas installations are in proper working order so that they are safe. Additional requirements must be followed if residential accommodation is over commercial premises.
- The above applies to main stream residential accommodation which is privately rented out.

1.4 Buildings above six storeys

Out of 30,300 approximately dwelling fires attended by Fire and Rescue Services in England in 2016/17 around 75% were in houses, bungalows, converted flats and other

properties and 25% were in purpose built blocks of flats. Of these 16% of them were in low rise blocks (one to three storeys), 6% in medium rise (four to nine storeys) and 2% in high rise (ten storeys and above).

Buildings above six storeys now require the provision of at least dry risers under building regulations, along with special attention to combustibility of external materials. These issues have been brought sharply into focus by the awful events at Grenfell Tower, and it is unwise to speculate too much. Nevertheless, it does appear that the drive to insulate buildings to conserve energy and reduce fuel poverty, has been a factor that has resulted in the imperatives of fire safety in high rise and other large buildings being disregarded. Close scrutiny is taking place as regards alternative solutions that have been adopted to comply with the relevant building regulations around the cladding and insulation in particular for these buildings.

Insufficient testing has previously taken place, particularly where different materials/components are used in combination on the exterior of not just high-rise flats but more widely. Nevertheless, vitally important as these issues are in the case of high rise blocks of flats, as well as other buildings which have been externally cladded, they do not arise in the rest of the private rented sector.

1.5 Existing buildings

With the horrible exception of Grenfell Tower, fire safety in residential accommodation has improved significantly over time. Undoubtedly, there are grave issues which need to be addressed in the case of high rise blocks of flats generally. We would nevertheless maintain that, despite all of the complexities that surround fire safety in residential accommodation, existing standards suggested in relevant guidance for existing buildings (principally the LACORS Guidance and LGA Guidance for Purpose Built Blocks of Flats) are adequate and satisfactory. Indeed, the Fire Protection Association has publicly recognised that little can be done about these existing buildings.

One thing that can, however, be achieved is to ensure that alterations do not compromise fire precautions and, above all, existing precautions are satisfactorily maintained and will operate effectively. Good housekeeping is required; in particular to ensure that the risk of fire breaking out in the first place is minimised.

Improvements are needed however, in our view, to ensure that all those involved, including tenants and residents, play their part. This is equally true of new buildings as and when they are brought into use. However, the existing complexity and length of guidance and the overlapping of legislative provisions is, in reality, a barrier to effective implementation and understanding of fire safety.

1.6 Mixed Buildings

It is important to note, however, that this report does not look at buildings where there is a mixed use such as a block of flats with commercial premises below; nor at mixed residential buildings, e.g. a mix of bed sit accommodation along with self-contained flats within the same building. Such situations add to the complexity of the approach required towards fire precautions.

1.7 The risk assessment approach

One can perhaps question whether the risk assessment process in its present form has been over emphasised under the modern regime and is perhaps counterproductive, because it appears to put too much responsibility on those conducting it; effectively to design fire precautions for the building.

Due to the variations between different types of residential buildings and their occupancy precautions do need to be made specific to the accommodation in question. Perhaps therefore the process involved and its purpose needs to be reconsidered. Rather, there could be an assessment of compliance with benchmark standards suggested in guidance, along with looking at the type of occupancy, the layout of the building and particular risks of fire starting. For each property, specific risks do need to be identified and addressed. Importantly, there needs to be a greater degree of assurance for those conducting such assessments so long as they do it correctly in accordance with guidelines that the building for which they are responsible complies and that they have done what is required of them.

1.8 Further work

Alongside this report RLA PEARL is publishing a companion report identifying the person who is responsible for compliance with the different legislative codes referred to in this report which govern fire safety across all residential tenures.

Both of these reports set out the detailed research which underpins our current guidance to our member landlords and, importantly, informs the evidence which we will be submitting to the Government's review into building regulations and fire safety led by Dame Judith Hackitt.

2. The Legislation

This section looks at the extent to which legislation sets fire safety in residential accommodation and identifies the enforcing authority. It covers all tenures, and also identifies in general terms the person who is responsible for compliance.

2.1 Building Regulations

Scope: Building Regulations apply when building works, including new build and alterations are carried out to any residential accommodation of all tenures. However, unless changes are made, there is no requirement to upgrade residential accommodation to meet current Building Regulations. Essentially, building regulations are about the safety of buildings. They aim to achieve reasonable standards of health and safety for persons in or about of buildings as well as others who may be affected. They are not concerned with protecting property.

Standards: The basic legislative requirements for fire safety under Building Regulations are:

- Buildings shall be designed and constructed so that there are appropriate provisions for the early warning of fire and appropriate means of escape in case of fire,
- Internal spread of fire to interior linings of the building is restricted,
- Internal spread of fire is restricted in relation to the structure,
- The external works and the roof should adequately resist the spread of fire,
- There should be access facilities for the Fire and Rescue Service,

The Regulations also require that building work shall be carried out with adequate and proper materials which are appropriate for the circumstances in which they are used, are adequately prepared and applied, as well as this being done on a workmanlike manner. There is power to dispense with/relax requirements. The Regulations also apply if changes of use take place.

Application: Building regulations apply across the board to all types of residential accommodation.

Enforcement: The enforcing Authority is the Local Authority Building Control but alongside the Local Authority there is a system of approved Building Inspectors, essentially qualified individuals who have extensive powers to act in place of a Local Authority Building Inspector.

2.2 The Housing Act 2004/Housing Health and Safety Rating System (HHSRS)

Scope: The 2004 Housing Act introduced the Housing Health and Safety Rating System (HHSRS). Essentially, this is a Local Authority enforcement tool covering 29 hazards, including fire. As such it does not set standards. It applies in all types and tenures of residential accommodation.

The fire hazard is defined as the threat of exposure to uncontrolled fire and associated smoke. Under HHSRS there is a complex scoring system which assesses the risk i.e. the likelihood of the occurrence of fire and the ensuing consequences in terms of death or injury. Schedule 1 of the 2004 Act determines the person on whom the improvement notice must be served requiring works to be carried out to provide fire precautions. As such, in the absence of such an order, no one is responsible legally for compliance, although there is clearly the potential for action to be taken if the owner/landlord does not implement the fire precautions sufficiently to avoid any enforcement action being taken.

It is settled case law that a local housing authority cannot serve a notice on itself requiring improvement works under HHSRS. Furthermore, the Local Authority Environmental Health Team would regard itself as conflicted in any case when dealing with its housing provider counterparts. This is a serious defect in this system, although the Fire and Rescue Service authority can serve an enforcement notice but only where it has jurisdiction i.e. over the common parts.

Standards: As such, HHSRS does not mandate any minimum standard. The intention is that residential accommodation should be designed constructed and maintained with no hazards or they should be reduced as far as possible. The underlying principle of HHSRS is that any residential premises should provide a safe and healthy environment for any potential occupier or visitor. Non-hazardous materials should be used and the building should be free from both unnecessary and avoidable hazards, including the hazard of fire. However, these principles are not actually set out in the legislation itself, only in statutory Government Guidance (HHSRS Operating Guidance).

Application: These provisions apply, across the board, to all types of residential accommodation but overlap with the Fire Safety Order- see next section.

Enforcement: The enforcing authority is the Local Housing Authority.

2.3 Fire Safety Order (FSO)

Scope: The correct title for the Fire Safety Order is the Regulatory Reform (Fire Safety) Order 2005. This applies to the common parts of multi occupied residential accommodation of all tenures but not the individual flat/units within a building. Therefore, neither the person with control i.e. the “responsible person” for the building nor the Fire and Rescue Service (the enforcement Authority under the FSO) have

jurisdiction over the whole of a block of flats. The Local Housing Authority, do have such jurisdiction under HHSRS/the 2004 Act. Divided enforcement powers and divided responsibilities lead to complexities and uncertainty.

The FSO superseded the Fire Precautions Act 1971 which applied to certain types of commercial premises e.g. hotels offices and shops. By a quirk, Case Law in relation to health and safety at work legislation decided that the common parts of a block of flats were non-domestic/commercial premises and therefore they fall within the FSO.

The FSO is explicit in that it states that it is not applicable to “domestic premises” which means that it does not apply at all to flats, maisonettes, bedsits or other residential units themselves. However, it does apply to any facility that is used in common by the occupants of more than one private dwelling, e.g. a shared kitchen.

Even though work has been completed to comply with Building Regulations where new build work is carried out, a risk assessment must also be carried out at the time the building is first put into use, where this is required under the FSO. It is unlikely that any further measures would be needed, beyond putting in place appropriate measures to manage fire safety on an ongoing basis, at least so long as the building is put to its intended use.

Standards: The FSO crucially places responsibility for fire safety in a building on the responsible person. There is a complex definition of who is the responsible person. Normally, it will be the block owner or whoever manages the block, such as a management company, which can include a residents’ controlled management company or a right to manage company. The FSO legislation imposes a general fire safety duty to ensure so far as reasonably practicable the safety of persons who are in the premises or in their vicinity. this means that there is a legislative requirement to provide general fire precautions to:

- Reduce the risk of fire and the risk of spread of fire,
- Provision of means of escape and to ensure that they can be safely and effectively used,
- Means for fighting fires,
- Mean to detect fire and give warning,
- Arrangements to be taken including measures to mitigate the effects in case of fire,

Under the legislation the responsible persons must make a suitable and sufficient assessment of the risks for the purposes of identifying the general fire precautions that need to be taken to comply with the requirements of the Order. This must be kept under review. In reality, this requirement has become the focus of the FSO and is often an end in itself rather than the general fire safety requirement under the FSO.

Under the FSO whilst there is a requirement to appoint a competent person to assist in the implementation of fire precaution measures; there is no such obligation when carrying out a risk assessment. Firstly, one wonders how often in practice a

competent person is appointed. Secondly, as the risk assessment process is central to the FSO, there ought to be some obligation to appoint a competent person to assist with the risk assessment even though ultimately it remains the responsibility of the “responsible person”. This could be dispensed with in straight forward situations.

Responsibilities under the FSO only relate to matters over which the responsible person has control.

Duties under the FSO are owed to those in or visiting the building or who are in the vicinity of the building (called “relevant persons”).

Application: The FSO applies to blocks of flats (whether purpose built or converted) but only their common parts; likewise, in bedsit type accommodation. The FSO does not apply in shared houses (please see below), and focuses on the common parts, but it is recognised that to properly fulfil duties under the FSO the responsible person must consider the flats etc., who occupies them and which precautions may be taken in respect of flats etc., within the block. Good practice indicates that at least 10% of the flats should be inspected internally

It should be noted that under the FSO if it applies to a building then any licence condition relating to fire safety which would otherwise apply is disapplied. In principle, what this means is that in the case of a house in multiple occupation (HMO), if an HMO licence is in place dealing with the fire safety in the common parts of the block flats or an HMO then this is in effect superseded by the fire risk assessment and the licence condition itself has no legal force but only in relation to the common parts. This could apply in the case of a converted block of flats (Section 257 HMO) where there is an additional licencing scheme in force. In the next section, we look further at HMOs.

Shared houses, while HMOs, are outside the scope of the FSO where they are tenanted by a group of persons (such as students or young professionals) who have a joint tenancy of the whole property and share facilities. On the other hand, bedsit accommodation will be within the FSO as having common parts. All such property is subject to HHSRS as well. If rooms are separately let in what is otherwise really a shared house then the FSO would apply. This is frequently overlooked.

Enforcement: As already indicated the Fire and Rescue Service is the enforcing authority. It has powers to advise as well but different authorities take different views of the extent of this responsibility.

2.4 Houses in Multiple Occupation (HMOS)

Scope: HMOS include premises which are occupied by three or more persons who are not members of the same “family”. They include shared houses, bedsit and similar accommodation, etc.

Purpose built blocks of flats are never HMOs, but individual flats within such a block can be flats in multiple occupation and therefore HMOs. Converted blocks of flats (the block as opposed to individual flats) can be what is called Section 257 HMOs which applies where the building is not converted so as to comply with 1991 (or later) Building Regulations and more than a third of the flats are privately rented. Again, any individual flat in any converted block of flats can be an HMO as a flat in multiple occupation whether or not the block itself is an HMO.

All HMOs (whether licenced or not) are subject to the HMO management regulations. These do not require the provision of fire precautions; rather they are about the maintenance and upkeep of any existing fire precautions, including a duty on occupiers to cooperate with fire precautions which are present (for more information see HMO Management Regulations in the Glossary). The manager of the premises is responsible for compliance with the Regulations.

Not all HMOs are licensable. Mandatory HMO licensing was introduced, at least in part, to deal with larger HMOs which were perceived to present additional fire safety risk. Currently it applies to properties with three storeys or more and five or more occupants, although local authorities have discretion to bring other properties within the scope of licensing through additional HMO licensing.

Mainly HMO licensing is about the private rental sector although occasionally it can impact on owner/occupied flats in converted blocks if more than one third of the flats are rented out (where additional HMO licensing operates).

Standards: If an HMO is licensed (whether subject to mandatory HMO licencing or additional HMO licencing), provision about fire safety can be made by licence conditions. The relevant legislative requirement is that adequate fire precautions facilities and equipment must be provided of a type number and location as is considered necessary. The licence holder is responsible for compliance.

There is also a mandatory licence condition requiring the provision of smoke alarms in licensable HMOs.

Before granting an HMO licence the legislation requires that the Local Housing Authority must be satisfied that the required precautions etc. are provided or it must impose licence conditions to that effect.

In the case of Section 257 HMOs (converted blocks of flats which are not compliant with modern Building Regulations) if additional HMO licencing is in place then fire safety can also be dealt with via licence conditions, as well as HHSRS and the FSO. However, as pointed out above, licence conditions would not apply in the common parts as explained above under the FSO Section. No wonder it is all rather confusing.

Application: The requirements only apply to licensed HMOs (except for the HMO Management Regulations which apply to all HMOs).

Enforcement: The Local Housing Authority is enforcing authority for HMO licences and under the HMO Management Regulations.

2.5 Selective licensing

Scope: Local authorities have a discretion to impose selective licensing in areas of low housing demand or anti-social behaviour, as well as in cases where other criteria are met, including the need to undertake comprehensive HHSRS assessments of properties in the area where licensing applies. Selective licensing applies to all types of residential accommodation, except licensable HMOs in the designated area. This only applies in the private rented sector

Standard: The legislation prescribes standards as to the provision of smoke alarms in licensed premises by way of mandatory licence conditions both in England. In England, this mirrors the requirement under the Smoke Alarms Regulations. The licence holder is responsible for compliance.

Application: These relate to privately rented residential accommodation (other than licensable HMOs) which are located within designated areas where the licensing scheme applies.

Enforcement: By the Local Authority.

2.6 Smoke and Carbon Monoxide - Smoke Alarms and Carbon Monoxide Detectors (England) Regulations 2015

Scope: These regulations are only applicable in England (except an amendment in relation to mandatory licensing conditions for licensed properties in Wales). They apply to all types of residential accommodation, except where this is subject to licensing (whether HMO licensing or selective licensing) but where properties are licensed equivalent licence conditions are required to be imposed. The landlord letting the property is responsible for compliance

Standard: They require a smoke detector on each floor of rented residential accommodation, whether houses bungalows or flats. The alarms must be tested on the day the tenancy starts i.e. the tenant moves in. Carbon monoxide detectors must be fitted where there is a solid fuel burning appliance. The standard is basic and is lower in some instances than may be required in the case of certain types of accommodation e.g. shared houses and potentially flats.

Application: These Regulations (and equivalent licensing conditions) only apply to privately rented residential accommodation.

Enforcement: By the Local Authority.

2.7 Other Legislation

All of the regulations mentioned below are relevant to fire safety as they make provision for matters relevant to safety in residential accommodation.

2.8 Gas Safety - Gas (Installation and Use) Regulations

These regulations impose detailed requirements in relation to gas safety, including a duty on the landlord to maintain appliances and installation pipework in a safe condition, as well as carry out annual safety checks undertaken by a qualified person.

2.9 Electrical Safety - Electrical (Safety) Regulations

These require that any electrical appliances provided by the landlord to be safe at the outset of the tenancy. This statutory requirement no longer applies once the tenancy starts.

2.10 Electricity at Work Regulations

These regulations are made under the Health and Safety at Work Act 1974. They require electrical systems to be maintained in a safe condition. Although not generally realised, as an individual landlord, they may well be regarded as a self-employed person for the purposes of these regulations so they would impose duties on landlords. Likewise, where a landlord has any employees again the same duties could arise. In practice, however these regulations are not enforced for the purposes of ensuring safe electrical systems in residential accommodation. The Regulations also underpin PAT testing for electrical appliances.

2.11 Furniture and Furnishings: fire safety regulations

These require that only compliant furniture and furnishings are provided by landlords in residential accommodation. They do not apply to items brought in by tenants.

3. Guidance

There is considerable guidance available both published officially and sanctioned by Government, although produced by others. This guidance overlaps various regulatory regimes already discussed above and this adds to the complexity of the subject. This section looks at the extent to which guidance sets standards. Again, this deals with all tenures.

3.1 Building Regulations

Approved Document B: The key guidance under Building Regulations is Approved Document B. It is possible to depart from this guidance provided that the legislative requirements are still met. There has been considerable focus on Approved Document B as a result of the Grenfell Tower fire. In this situation departures from Approved Document B will be very much for consideration at the Public Inquiry.

The current version was first published in 2006 although it has been modified to some extent since then. Approved Document B also incorporates a number of British Standards (published by the British Standards Institution). Approved Document B also provides the Ideal for the purposes of HHSRS i.e. the optimum achievable standard. It also underpins the guidance on purpose built blocks of flats.

3.2 HHSRS

Official guidance is contained in the *HHSRS Operating Guide*. It is based on recorded death and injury statistics which are now somewhat out of date. This contains some very generalised “high level” guidance, which is of little practical use. The Guidance is very much a set of instructions regarding the carrying out of the HHSRS risk assessment process.

HHSRS Enforcement Guidance is Government Guidance to Environmental Health Officers about the use of HHSRS powers once the HHSRS assessment process has been undertaken. Under HHSRS the risk assessment is done on the basis of the most vulnerable group which in the case of fire is the over 60's, but it is then necessary to relate the outcome to the property in question and its actual occupiers.

The key guidance for HHSRS purposes is the *LACORS Guidance* for existing properties. We look at the LACORS guidance below.

LACORS guidance does not address purpose built blocks of flats; nor converted flats where the conversion is in accordance with 1991 or later Building Regulations. Separate guidance has been published for *Purpose built blocks of flats by the Local Government Association* (LGA). Unlike the FSO this addresses the block as a whole

including the common parts and individual flats. This is another important piece of guidance which we look at separately below.

3.3 Fire Safety Order (FSO)

The official published guidance is the *Fire Safety Sleeping Accommodation Guide*. This is one of a series of official Government guides published for various types of accommodation and subject to the Fire Safety Order. It only addresses common parts; not individual flats bedsits etc. Within its scope is a wide range of accommodation e.g. hotels, hostels, halls of residence etc. It is generally accepted that this guidance is not specifically relevant to blocks of flats and the advice from LGA Guidance is that the LGAs Purpose built blocks of flats guidance should be relied upon; not the official Sleeping Accommodation guide in relation to flats.

3.4 Houses in Multiple Occupation (HMOs)

The applicable guidance for HMO accommodation is the LACORS guidance.

3.5 Risk Assessments

The Government have also published a chart giving succinct guidance in relation to carrying out risk assessments. More detailed guidance on this aspect can be found in guidance particularly the Fire Safety Sleeping Accommodation Guide.

3.6 Local Guidance

Added to all the relevant documentation is a series of local guides produced by various local authorities and Fire and Rescue Services. Often these seek to repeat national guidance, perhaps with variations. Some variations may be perfectly justified where they relate to particular local circumstances but anyone consulting the national guidance would think that in normal circumstances this should suffice. Regrettably, this is not necessarily so because local authorities in particular through HHSRS may enforce additional or different requirements.

3.7 British Standards

British Standards play an important role in the design etc. of fire safety precautions. They are frequently referred to in Approved Document B as well as other Guidance. However, these references are often superseded by later versions of the Standards. The three current versions most relevant to residential accommodation are:

3.7.1 BS9999: 2017 Fire Safety in the Design Management and Use of Buildings- Code of Practice

This British Standard gives recommendations and guidance on the design management and use of buildings (but not individual dwellings) to achieve reasonable standards of fire safety for all people in and around them. It also provided guidance on the ongoing management of fire safety within a building. It applies to the design of new buildings extensions or changes in the use of an existing building. It can be used as a tool for assessing existing buildings.

It supersedes BS 5588 and includes advice on auto-mist fire suppressions systems.

3.7.2 BS5266 Parts 1 and 7 Emergency Lighting Code of Practice for emergency lighting of premises

This contains detailed guidance on the application and practice of emergency lighting. This includes the common parts in blocks of flats.

3.7.3 BS5839-6: 2013 Fire Protection and Fire Alarm Systems for Buildings. Code of Practice for the Design Installation Commissioning and Maintenance of Fire Detection and Fire Alarm Systems in Domestic Premises.

This gives recommendations for the planning design installation commissioning and maintenance of fire detection and fire alarm systems in domestic premises that are:

- designed to accommodate a single family
- HMOs with self-contained units (to accommodate a single family)

It applies to both new and existing domestic premises.

3.8 LACORS Guidance

LACORS was the now defunct Local Authority Coordinators of Regulatory Services. This now means that their guidance on fire safety is without an owner. This guidance fills an essential gap caused by the lack of detailed official guidance particularly in relation to HHSRS. It covers houses, bungalows, HMOs, and converted flats. There is also a clarification document issued by LACORS which clarifies certain aspects of the original Guidance.

However, specifically excluded from its scope of the guidance is any residential accommodation which complies with 1991 or later building regulations. This produces yet another oddity because there is no guidance as such for converted flats, which have been converted in compliance with these modern building regulations. Instead, the guidance from the LGA is that, in practice, you can use the LGA's purpose built block of flats guidance in this situation, even though that guidance is said to exclude converted flats and only applies to purpose built blocks of flats. However, this

is the only way that this gap can be “plugged” so far as the coverage of published guidance is concerned.

The intention of the guidance which applies to existing residential accommodation, which does not comply with 1991 or later building regulations, is that provided the guidance is followed then you should comply with HHSRS, HMO licensing where applicable and the FSO if this is relevant. However, there is no assurance of compliance and indeed the guidance specifically states that other solutions may be equally appropriate so long as they provide for the same level of safety.

The guidance specifically states that it is informed by building regulations and relevant British standards.

The guidance adopts a risk based approach both where fire safety risk assessments are mandatory as in cases where the FSO applies and also in cases where they are not a legal requirement.

The guidance does not introduce new standards but builds on existing good practice and guidance.

LACORS guidance covers buildings up to six storeys in height. It requires consideration as to whether the risk in any particular property is higher or lower than normal and it stresses that fire safety solutions must be based on the level of risk presented by an individual property and its level of occupation. It stresses that there is no single solution. It allows for compensatory measures to be taken where it is not practical to improve a particular aspect. It considers that if the property is constructed or converted to a standard that would meet the requirements of modern Building Regulations Approved Document B then it is unlikely that additional safety measures would be required. The guidance considers commonly encountered types of residential premises and provides suggested fire safety solutions which could be applied to achieve a reasonable and acceptable standard of fire safety in each. Each solution is based on a fire risk assessment.

LACORS Guidance does not specifically cover existing buildings which are not purpose-built blocks of flats but which exceed six storeys in height, which is another gap in the scope of the Guidance.

3.9 The LGA guidance on Purpose Built Blocks of Flats

This is the primary guidance on purpose built blocks of flats, whether the block as a whole or individual flats, in preference to the official Fire Safety Sleeping Accommodation guidance. It is non-prescriptive and it uses the modern building regulations as a bench mark.

The objective of the guidance is to ensure a satisfactory standard of fire protection. The guidance states that it normally inappropriate to retrospectively upgrade existing

blocks to meet current benchmarks without justification on the basis of the fire risk assessment. There may however be situations in which the original benchmarks applied at the time of construction are far from what is acceptable today and as a result there may be an unacceptable risk.

3.10 Voluminous Guidance

There is simply too much Guidance. Inevitably as a result there will be overlaps, inconsistencies, and contradictions. Further on in this report we try to make things clearer by reconciling the differing Guidance to endeavour to produce a solution which essentially involves forgetting about which legislation applies (except for the need to conduct a risk assessment where the FSO applies, to comply with Building regulations if work is carried out and to comply with any applicable licence conditions). Before doing so to help clarify matters we pinpoint relevant Guidance applicable to each basic property type. It should not be necessary to have to do this but this is the only way you can make sense in this situation.

4. Specific Legislation/Guidance for Different Types of Residential Accommodation

This section identifies the different specific legislation and guidance applicable to differing types of residential accommodation of all tenures BUT specifically identifying additional requirements which apply to the accommodation which is privately rented. There is also legislation highlighted above that applies to all types including HHSRS and the Building Regulations (if work is done). It identifies cases where compulsory standards are set and also how implementation is affected. It does not take account of any requirements under leases or tenancy agreements.

NB: Although HHSRS is said to apply in all tenures where the local authority owns the accommodation the authority cannot take enforcement action against itself. It could, however, still take enforcement action against the owner of an individual flat in a block owned by the authority.

4.1 Standards applicable to different types of residential accommodation

IMPORTANT - * indicates additional legislation for private rented residential accommodation.

As regards the Smoke Alarm Regulations as responsibility for compliance rests with landlords under residential tenancies this is included with individual residential units rather than the blocks in the case of flats.

4.2 Single Dwellings

These include houses and bungalows let to individuals, couples or families (not sharers).

Legislation:

- HHSRS
- Smoke Alarm Regulations (if privately rented).*

Guidance: LACORS guidance (not exceeding six storeys in height)

Implementation: Good practice unless an order is made under HHSRS, except in the case of privately rented accommodation where the Smoke Alarm Regulations apply (or Selective Licensing) requiring minimum provision for smoke alarms.

4.3 Individual Single Flats – Purpose Built Blocks

These include flats let to individuals, couples, or families (not sharers).

Legislation:

- HHSRS
- Smoke Alarm Regulations (if privately rented).*

Guidance: For purpose built blocks and converted blocks complying with 1991/later Building Regulations LGA Purpose built blocks of flats guidance.

Implementation: Good practice, unless an order is made under HHSRS, except in the case of privately rented accommodation where the Smoke Alarm Regulations apply (or Selective Licensing where applicable) requiring minimum provision for smoke alarms.

There is a limited duty on individual flat owners if they are responsible for the repair/maintenance of anything over which they have control which forms part of the common parts under the FSO.

4.4 Individual single flats – converted blocks

Legislation:

- HHSRS.
- Smoke Alarm Regulations (if privately rented).*
- HMO Management Regulations will apply where the block is a Section 257 HMO and the manager of the flat is also the manager of the common parts. * (see also 4.5.4.3 – third bullet point).

Guidance: In converted blocks of flats which do not comply with modern building regulations the LACORS guidance (so long as the block does not exceed six storeys in height).

Implementation: Good practice, unless an order is made under HHSRS, except in the case of privately rented accommodation where the Smoke Alarm Regulations apply (or Selective Licensing where applicable) requiring minimum provision for smoke alarms. There is a limited duty on individual flat owners for the maintenance/repair of anything over which they have control which forms part of the common parts under the FSO.

4.5 Flats in multiple occupation

These can be of two types. Firstly, where the flat is let as a whole to a group of sharers who rent the whole flat as joint tenants. Secondly, where individual rooms are rented out within the flat but there is shared use of amenities within the flat. Both can

be found in purpose build blocks or converted blocks of flats. Usually, but not always, they will be privately rented and this is the assumption which is made.

In either case, as a flat in multiple occupation, the flat may be subject to HMO licensing. Mandatory HMO licensing will only apply if the flat is laid out on three floors (which is rare in practice) and occupied by five or more persons but additional HMO licensing may apply to other flats in the area that the flat is located.

4.5.1 Flats in multiple occupation occupied by sharers

Legislation:

- HHSRS.
- If HMO or selective licensing applies then licence conditions will prescribe matters relating to fire safety.*
- Where privately rented the Smoke Alarm Regulations (or appropriate licence conditions if applicable) will apply requiring provision of smoke alarms.*
- HMO Management Regulations will apply.*

Guidance: LACORS Guidance will apply (even in purpose built blocks of flats).

Implementation: Where applicable the following can apply:

- HHSRS if an order is made.
- Smoke Alarm Regulations when privately rented.
- Licence conditions if the property is subject to HMO or selective licensing.
- HMO Management Regulations.
- There is a limited responsibility on individual flat owners if they are liable for the repair or maintenance of anything over which they have control which forms part of the common parts under the FSO.
-
- Otherwise good practice.

4.5.2 Rooms in flats in multiple occupation

Legislation:

- HHSRS.
- Smoke alarm regulations if privately rented.*
- Licence conditions where HMO or selective licensing applies. * (but disappplied in relation to the common parts).
- The FSO will apply to the common parts of the flat itself, e.g. entrance, hallway and corridor.
- HMO Management regulations will apply.*

Guidance: LACORS Guidance will apply (even in purpose built blocks of flats)

Implementation: Where applicable (see above) the following can apply:

- HHSRS if an order is made.
- FSO.
- Smoke Alarm Regulations where privately rented.
- Licence conditions if the property is subject to HMO or selective licensing (but disapplied in relation to common parts as the FSO applies)
- HMO Management Regulations where privately rented.
- There is a limited responsibility of the owners of individual flats to be liable for the repair and maintenance of anything which forms part of any of the common parts under the FSO.
- Otherwise good practice.

4.5.3 Purpose built blocks of flats

This is about the block as a whole, not individual flats within the block.

Legislation:

- FSO for the common parts.
- HHSRS for the block.

Guidance: LGA Purpose built blocks of flats guidance

Implementation:

- The FSO imposes the general fire safety duty and requirement for risk assessment. This applies to the common parts.
- HHSRS if an order is made
- Otherwise good practice.

4.5.4 Converted blocks of flats

This is about the block as a whole.

To help decide which guidance is applicable please answer the following questions:

1. Does the conversion comply with current Building Regulations (1991 or later Building Regulations)?
 - a) Yes – see section 5.5.4.1 below
 - b) No – move to the next question.
2. Are more than one third of the flats in the block privately rented out?
 - a) No – See section 4.5.4.2 below.
 - b) Yes – As the block is not compliant with 1991 or later Building Regulation and more than one third of the flats are privately rented out this is a Section 257 HMO. Please see section 4.5.4.3 below.

Note: If the block of flats is within section 4.5.4.2 or section 4.5.4.3 below but exceeds six storeys in height there is no specific guidance applicable.

4.5.4.1 Converted block of flats compliant with modern Building Regulations

Legislation:

- FSO for the common parts.
- HHSRS for the block.

Guidance: In practice, although not specific for this purpose LGA Purpose Built Blocks of Flats Guidance can be followed.

Implementation:

- The FSO applies the general fire safety duty and requirement for a risk assessment in relation to the common parts.
- HHSRS applies if an order is made.
- Otherwise good practice.

4.5.4.2 Converted block of flats which is non-compliant with modern building regulations but which is not a Section 257 HMO.

Legislation:

- FSO for the common parts
- HHSRS for the block
- Otherwise good practice

Guidance: LACORS Guidance (where the block is no more than six storeys in height).

Implementation:

- The FSO applies to general fire safety duty and requirement for risk assessment in relation to the common parts.
- HHSRS applies if an order is made.
- Otherwise good practice.

4.5.4.3 Converted blocks of flats which are Section 257 HMO

Legislation:

- FSO for the common parts.
- HHSRS for the block.
- The HMO Management Regulations for Section 257 Blocks of Flats apply. They apply to all parts of the building over which the manager can be expected to have control.* Thus, for instance, if the landlord owns the whole block but

rents out individual flats the flats will also be within the scope of these Regulations.

- Additionally, if additional HMO licensing operates in the area and it extends to Section 257 HMOs then the block is subject to HMO licensing. Licence conditions will apply in relation to fire safety but not to any common parts (including any common parts within individual flats) as these are disappplied by the FSO.*

Guidance: LACORS Guidance (assuming that there are no more than six storeys in the block).

Implementation:

- The FSO applies the general fire safety duty and requirement for risk assessments in relation to the common parts.
- If HMO licensing applies then licence conditions will specify fire precautions (disappplied by the Fire Safety Order to the common parts so that they only apply to individual units).
- The HMO Management Regulations will also apply in any event to a converted block of flats which is a Section 257 HMO (including individual flats over which the manager can reasonably be expected to exercise control).
- Otherwise good practice.

4.6 Shared Houses

The definition of a shared house is considered in detail in Paragraphs 35.1 to .6 of the LACORS Guidance. If the property meets this definition the FSO does not apply. However, if this is not the case the FSO applies, i.e. where rooms are individually let to different tenants.

4.6.1 Shared houses (let as a whole)

To qualify as a shared house the property should have been let as a whole to a group as joint tenants. This is a true shared house. If rooms are individually let out see 5.6.2.

Legislation:

- HHSRS
- Licence conditions where the property is a licensable HMO.*
- The Smoke Alarm Regulations (or equivalent licence conditions) will also apply if the house is privately rented.*
- HMO Management Regulations.*

Guidance: The relevant guidance is the LACORS Guidance (so long as the property does not exceed six storeys in height).

Implementation:

- The Smoke Alarm Regulations (or equivalent provision by way of HMO or Selective Licensing) imposes minimum requirements in relation to smoke alarms (but more extensive provision is needed).
- HHSRS if an order is in force.
- Otherwise, except an order is in force under HHSRS this is down to good practice unless the shared house is subject to HMO licensing
- If HMO licensing applies then licence conditions will require compliance with fire precaution standards as set out in the licence.
- HMO Management Regulations will also apply where privately rented.

4.6.2 Shared houses (individual rooms)

Whilst the LACORS Guidance recognises this category it does not really address what needs to be done. This is an intermediate situation between the true shared house and bedsits. In this kind of house there is likely to be some degree of communal living, e.g. sharing a living room/kitchen.

Legislation:

- FSO applies to the common parts.
- HHSRS.
- Licence conditions where the property is licensable HMO but disapplied by the FSO to the common parts. *
- The Smoke Alarm Regulations will also apply if the house is privately rented.*
- HMO Management Regulations.*

Guidance: Up to a point the LACORS Guidance applies (so long as the property does not exceed six storeys in height). LACORS Guidance itself is not specific as to what is required but bedsit standards could be applied. In any case additional fire warning coverage is needed and some local authorities have provided local guidance.

Implementation:

- The Smoke Alarm Regulations (or equivalent provisions in HMO or selective licensing) includes minimum requirements in relation to smoke alarms (but more extensive provision is needed).
- The FSO applies to general fire safety duty and requirement for risk assessment in relation to the common parts.
- HHSRS applies if an order is in force.
- Otherwise, except if an order is in force under HHSRS, this is down to good practice unless the property is subject to HMO licensing.
- If HMO licensing applies then licence conditions will set out fire precautions but they are disapplied by the FSO in relation to common parts.
- HMO Management Regulations will apply where privately rented.

4.7 Bedsits

This means non-self-contained accommodation. In practice this accommodation is likely to be privately rented.

Legislation:

- FSO applies to common parts.
- HHSRS applies to individual bedsits and the building as a whole.
- Where licensable licence conditions also apply but are disapplied in the case of the common parts by the operation of the FSO.*
- The Smoke Alarm Regulations will apply if the property is privately rented.*
- HMO Management Regulations.*

Guidance: LACORS is the relevant guidance.

Implementation:

- The FSO applies the general fire safety duty and requirement for risk assessment in relation to the common parts.
- HHSRS applies if an order is in force.
- The Smoke Alarm Regulations (or equivalent licence conditions under HMO or Selective Licensing if applicable) require minimum provision of smoke alarms (but a higher standard will be required).
- If HMO licensing applies then licence conditions will specify for fire precautions (disapplied by the Fire Safety Order to the common parts so that they only relate to the individual units).
- The HMO Management Regulations.
- Otherwise good practice.

4.8 Building Regulations

Building Regulations only apply when building works are carried out or a change of use takes place and they do not require improvements, unless and until such works are carried out. They apply to all tenures. They have therefore not been included in our analysis of the ways in which fire safety legislation is implemented, since they are not an ongoing obligation.

4.9 Owner/occupation

In reality, compliance by owner/occupiers is entirely dependent on good practice, unless the Fire Safety Order applies in which case implementation is compulsory, but only in the common parts of blocks of flats. Although HHSRS is tenure neutral, it is will only be in very exceptional cases that HHSRS powers would be used, although there is the potential for use in multi occupied buildings.

4.10 Compulsory prescription of standards

As can be seen from the above prescriptive setting of standards by way of legal requirements is very much the exception other than under Building Regulations where building work is done (even then there is the potential for flexibility). It is most common in the private rented sector. Compulsion applies as follows.

Licence conditions – This only applies in the private rented sector. Conditions can spell out precautions which need to be taken where licensing applies, whether HMO licensing or selective licensing (but only to a limited extent in the latter case) However, it is estimated that two thirds of properties which should be subject to mandatory HMO licensing are not licensed. Licensing only applies to the private rented sector anyway. Under Article 43 of the FSO they are disapplied in the case of common parts where the FSO applies.

Smoke Alarm Regulations – these regulations apply in England in all non-licensed privately rented residential accommodation, requiring at least one smoke alarm on each floor (with equivalent requirements imposed under licensing by licence conditions). As already pointed out elsewhere, however, this is often less than what is actually needed under relevant guidance. They also leave the type of detector to the landlord. These only apply to the private rented sector.

Building Regulations – These apply across all tenures. These do lay down statutory requirements, which have already been identified, but these are essentially “high level”. They are translated into more detailed requirements by the guidance set out in Approved Document B but it is permissible to depart from this, so long as the basic requirements are met, including requirements relating to materials. These apply to all tenures but only at the point when building works are carried out, or a change of use takes place.

Otherwise, standards are set by guidance compliance with which should meet applicable statutory duties (if any), although there is no guarantee of this. Which in itself produces problems particularly for conscientious owners or landlords as they can never be sure that they have done everything that they need to do. Of particular importance, is the absence of clarity around what is needed to avoid enforcement under HHSRS due to the risk assessment methods applied to determine compliance and the high level of discretion afforded to local authorities, particularly as fire hazards under HHSRS often fall within Category 2, where enforcement action is discretionary on the part of the local authority. This is despite the fact that the key point remains that HHSRS is the sole common means of enforcement that applies to all types of privately rented residential accommodation.

Under the FSO there is potentially a duty of co-operation on the owners of individual flats (whether in purpose built or converted blocks of flats) including private landlords, in relation to matters which are the responsibility of the owner of the individual flat which form part of the common parts, e.g. potentially front doors of flats. The ambit of this is uncertain.

5. Implementation

5.1 General approach and good practice

Often the implementation of satisfactory fire precautions in residential accommodation is dependent upon good practice; unlike in the commercial field where at least there is a statutory requirement for a risk assessment in virtually all such properties, along with a general fire precautions duty. HHSRS, the only universal enforcement mechanism in the case of residential accommodation, is an enforcement tool; not one imposing standards unless and until it is activated. In other words, it is a default mechanism.

One of the main drivers of the introduction of HMO licensing was to apply mandatory requirements for fire safety in larger HMOs. The reality, however, is that much of the licensing applies to larger student shared houses which have been changed over from being owner occupied, along with bedsits (which being governed by the Fire Safety Order in relation to their common parts mean that licence conditions are disapplied). Instead, it is the high-rise blocks of flats, usually owned by social landlords, which are now the major concern where the failings are most acute.

5.2 Mandatory Implementation

The only means of achieving automatic mandatory implementation in the absence of specific enforcement action are currently:

- Licensing where it applies in the private rented sector. Not only does this prescribe standards but it also provides a mechanism for requiring implementation.
- HMO Management Regulations. These do impose requirements as to the maintenance of existing precautions; not their provision in the first place. They also place obligations on residents. They apply to all types of HMO accommodation, not just that which is licensable. However, again, they only apply in the private rented sector.
- The FSO. This imposes requirements both as to risk assessments to determine what should be done in the common parts of multi occupied buildings, along with a general fire safety duty but only in the common parts of multi occupied buildings.
- Smoke Alarms Regulations. These require smoke alarms to be fitted in all types of privately rented residential accommodation (with equivalent mandatory licence conditions in licensable properties).
- Building control. Here as one would expect there is a different compulsory approach often through prior submission and approval of plans of proposed works. Alternatively, for smaller projects, there is an advance notice that the work is to be done or the work has to be carried out by a contractor who is a

member of an approved scheme so as to ensure compliance. There is also a system of inspection at various stages of the work. There is also a duty on the person carrying out the work to pass on fire safety information to the person having control for the purposes of the FSO which in practice means that it would only be applicable to the common parts of blocks of flats or other multi-occupied buildings where the building work is carried out or the change of use occurs.

6. Enforcement

6.1 Overview of Enforcement

Methods of enforcement depend on the relevant legislation. Other than the potential for enforcement by the fire authority in the case of the common parts of multi occupied buildings, local housing authorities, who are a key enforcement body in the case of residential accommodation, are themselves exempt from enforcement, even though in many instances they are major providers of social housing. One may perhaps legitimately ask “who guards the guards?” There is the possibility of Government intervention in the case of systemic non-compliance by local authorities – see below. Housing associations, are subject potentially to regulatory enforcement via their regulator but, following Grenfell Tower, there has been a great deal of criticism that the standards laid down by the regulator which means that intervention will only take place in extreme cases. Enforcement against owner occupiers is virtually non-existent other than in the case of flats

All enforcement bodies to have a large array of powers at their disposal. They do, however, also have an important role to advise, as well as their inspection and audit roles. In line with regulators generally, the intention is that they should proceed wherever appropriate on an informal basis, at least in the first instance.

6.2 Procedures

The following procedures are available in relation to specific properties –

HHSRS – the local authority can serve a hazard warning notice, improvement notice (requiring works), a prohibition order (preventing occupation of the property) or take emergency action to carry out works themselves. Prosecutions can be instituted for non-compliance. Works in default can be carried out but authorities are reluctant to undertake these for financial reasons, even though they are entitled to recover the cost.

Licensing – licences can be revoked or prosecution can take place for breach of licence conditions. Management Orders can be made under which local authorities can take over management of licensable premises. This latter power is so complex that most local authorities are very reluctant to use it.

HMO Management Regulations – prosecution can take place for breach of the regulations. A defect in the regulations is that there is no system of serving notice requiring compliance (this option was repealed by the Housing Act 2004).

FSO – improvement notices can be served (requiring works). Emergency prohibition notices can be served (including in the case of flats which are owner/occupied or tenanted of whatever tenure) and alteration notices can be imposed requiring prior

approval of certain types of alterations where the FSO applies. Prosecutions can be instituted for non-compliance with the requirements of the FSO.

Smoke Alarm Regulations – civil penalties can be imposed for breach. A remedial order can be made directing work to be carried out.

Additionally, where tragedies such as Grenfell Tower occur there is the potential for prosecution for corporate manslaughter. The ordinary law of gross negligence manslaughter also applies, along with the potential for prosecutions under the Health and Safety at Work Act – see Sections 3 and 4.

Building Regulations – local authority, building control, can serve notice requiring works to be carried out to comply with the regulations. Injunctions can also be obtained to deal with a breach. There can be prosecutions for non-compliance with the regulations. Under building control, there is also a system of inspection with a view to ensuring compliance. Completion Certificates will be issued to show that work has been satisfactorily completed in accordance with the Regulations.

6.3 Social landlords

In England, the Decent Homes Standard applies to social landlords and in Wales its Welsh equivalent for Welsh Quality Homes Standard operates. So far as the Decent Homes Standard is concerned one of the requirements is that there should be no Category 1 hazard under HHSRS which includes fire safety. The Welsh Quality Homes Standard makes a similar provision in Wales.

Under the English Standard, if the property has a Category 1 hazard present it fails and the Standard does require remedial action, unless this would prove too expensive or not be practicable. This is therefore a potential “let out”. Likewise, in Wales, remedial action will need to be taken if there is non-compliance.

As regards enforcement housing associations can be subject to enforcement action by local authorities under HHSRS. However, local authorities cannot enforce against themselves under HHSRS.

Where the Fire Safety Order applies to the common parts of the buildings then the Fire and Rescue Service can take enforcement action.

There is also the possibility of regulatory enforcement but this is only likely where there is systematic and serious failure. Under the Local Government Act 1999 and other similar statutory provisions, potentially the Secretary of State can direct action by local authorities to comply if performance requirements, or, in extreme cases, take over the housing function of the local authority.

In the case of housing associations, their regulator can also take regulatory enforcement action but, again, this is more in terms of serious systematic lapses,

rather than action in the case of individual properties where remedial works are needed.

7. Finding Solutions

Deliberately we do not put forward a comprehensive reform package in this respect which is intended to be an overview of the current situation. In this section, however, we do highlight some solutions based on current legislation/guidance, at least particularly to try and make sense of what a private landlord must in practice do in different situations.

7.1 Reconciling the different Guidance

While preparing updated guidance for our members, following the Grenfell Tower tragedy, we have taken a careful look at the available guidance so that we can give reliable pointers to our members and we hope that this is of wider interest. Provided you adopt a risk assessment approach (which is mandatory after all where the FSO applies) then appropriate use of either the LACORS Guidance or, where applicable, the LGA Purpose Built Blocks of Flats Guidance should suffice for most existing residential buildings. It seems to us that this is the only way of sorting out the wood from the trees. However, most importantly, in our view guidance for high rise blocks of flats (above six storeys) must urgently be revisited, in the light of what happened at Grenfell Tower. There are however gaps in the coverage of these two sets of Guidance, in relation to the coverage of the LACORS Guidance which does not deal with properties above six storeys in height.

There are differing approaches as between the LACORS Guidance and the LGA Guidance for Purpose Built Blocks of Flats where it is applicable. LACORS places great emphasis on fire alarms and warnings if fire breaks out, along with escape from the property. On the other hand, LGA Guidance is based very much on compartmentalisation of the individual flats, both under modern building regulations and earlier regulations.

Often in the case of purpose built blocks of flats a “stay put” policy is adopted, which has been a key issue following the Grenfell Tower fire. However, these different approaches do perhaps make sense because unless effective compartmentalisation exists in multi occupied buildings the objective should be to get people out as quickly and safely as possible if a fire breaks out and stay out. The Purpose Built Blocks of Flats Guidance will suffice for converted blocks of flats, where the conversion does comply with 1991 (or later) Building Regulations. At page 25 we have set out the principles applicable to private landlords. This attempts to make sense of the myriad regulations and guidance applicable in the private rented sector.

7.2 Defective Leases

A well-recognised further problem in the case of flats in separate ownership is that leases are frequently unclear about fire safety responsibilities or defective. It is not unknown in all the leases for there to be no provision to allow a block owner to recover the cost of fire precautions carried out in compliance with risk assessment requirements. Tortuous procedures have to be followed in order to recover the cost of fire precaution works when this is allowed. Such works often constitute improvements under leases so there may be no right to carry them out. It is no good leaving this to the possibility of lease variations either effected by agreement (often impossible to obtain because of the need for unanimity) or by application to the First Tier Tribunal; this rarely happens in practice. In our view, this is an issue that needs to be properly addressed with a suggested statutory code which can be enforced either by the block owner or the appropriate enforcing authority so as to ensure that modern fire precautions can be installed where required in this situation. Such a code would then become the implied term of each lease so that it would be contractually binding.

7.3 Tenant/resident responsibility

Worryingly, often landlords find that fire precautions have been interfered with by residents. A related issue is around enforcing obligations by tenants and residents of individual units. Again, leases do not make adequate provision in the case of blocks of flats. Only where the management regulations apply in the case of HMOs is sufficient provision made, e.g. prohibition on interference with fire precautions, but rarely are these enforced. Tenants and residents must of necessity play their part particularly in multi occupied buildings.

8. Conclusions

Our summary of legislation and guidance for fire safety in residential accommodation demonstrates the overlaps, gaps, and sheer complexity of this all-important topic, which must leave our readers bewildered. The main piece of legislation, the Housing Act 2004, does not set standards. It is left to guidance. The Fire Safety Order only applies to certain parts of buildings. The official guidance applicable to the Order is regarded as inadequate and is replaced by an alternative. How is anyone to navigate their way through all of this complexity and uncertainty? How are those who are responsible for fire safety, such as private landlords, to have the confidence and assurance that they are doing the “right thing”?

The reality is, that with official blessing from Government, LACORS (now a defunct body), and the Local Government Association (LGA) have had to step in to the breach and produce two sets of very useful and well-regarded guidance, but even these are not fully comprehensive as converted flats are left in something of a limbo in certain respects. They have had to be encouraged by concerned bodies such as ourselves, the RLA, to do this. We supported the introduction of a protocol to sort out who is the enforcing authority on a local basis but this is only voluntary. All of this is supplemented by local guidance which varies from authority to authority and is of differing coverage and quality. The reality is that this mass of local guidance adds a further layer of uncertainty and confusion.

The legislation which underpins fire safety sets different standards in different circumstances. It overlaps in that statutorily required risk assessments are only required in certain parts of certain types of building. HMO licensing is an added layer to all of this where it applies. Even then the current legislation is designed so that HHSRS should still be the driver of fire safety in HMO accommodation Licensing conditions which are otherwise applicable are then disapplied in certain parts of certain buildings where the FSO applies!

As we have seen different approaches are adopted when it comes to implementing fire safety, i.e. compliance as well as enforcement procedures. Much depends on whether the property is owner/occupied, rented from a social landlord, or privately rented.

When the current system was introduced there was a violent swing from the Fire Brigade taking responsibility for many buildings but with no guidance at all hardly in certain important areas, particularly in relation to single dwellings, to a situation where heavy responsibilities are placed on the shoulders of those who are least to bear them due to their duty to undertake risk assessments in a very complex and important area of health and safety where there are multi occupied properties involved .

Two parallel legislative codes were introduced at that time, the Housing Act 2004 and the Fire Safety Order 2005 but it was the case that “never should the twain meet”. They were developed in parallel and the only links are certain obligations of consultation between local authorities and fire and rescue authorities. Added to all of this is the involvement of Building Control but only in respect of new or altered buildings. It then became necessary to develop both LACORS and LGA Guidance to overcome this unsatisfactory state of affairs, so far as possible. The tragic circumstances of Grenfell Tower now raise the need to revisit this whole edifice with a view to simplification and better implementation and enforcement. Complex laws are less likely to be obeyed than those which are straight forward.

9. Glossary of Terms Used and Abbreviations

9.1 Glossary

To help understand this report these are the meanings of various expressions which have been used:

“Additional HMO Licensing”

Additional HMO Licensing is discretionary licensing that local authorities can impose in designated areas and when this is done the same scheme operates as is applicable with the mandatory HMO Licensing.

“Bedsit”

This is a non-self-contained unit of accommodation where the occupier also shares amenities such as a kitchen bathroom and/or living room. They are normally found in the private rented sector. In social or rented housing, they may be referred to as hostels.

“Flat”

This is a self-contained unit which has all its own amenities.

“High Rise Block of Flats”

We refer to a block of flats of a height in excess of 18 metres (six storeys approximately) as a high-rise block of flats in this report, adopting the distinction set out in Approved Document B for building regulation purposes, which is a key issue in the Grenfell Tower Inquiry. When compiling fire safety statistics and for other purposes different definitions are used.

“HMO Licensing”

There are two types of HMO licensing, mandatory HMO licensing and additional HMO licensing. The same rules apply where either form of licensing operates. See the definitions of additional HMO licensing and mandatory HMO licensing in this Glossary.

“HMO Management Regulations”

There are two sets of HMO Management Regulations but with equivalent provisions. They apply to all HMOs, including Section 257 HMOs and they operate irrespective of whether the HMO is licensable. Different regulations apply in England and Wales but essentially, they will contain the same provisions. They do not impose requirements as to the provision of fire precautions but do make provision to ensure that these are maintained. Under the Regulations the manager must:

- Keep all means of escape from fire free from obstruction and maintained in good order and repair.
- Ensure that any firefighting equipment and fire alarms are maintained in good working order.
- Must ensure that all notices indicating the location of means of escape from fire are displayed within the common parts so that they are clearly visible (not applicable to individual HMOs where there are four or fewer occupants).

Occupiers are subject to obligations:

- They must conduct themselves in a way that they will not hinder or frustrate the manager in the performance of his duties.
- Allow the manager for any purpose connected to the carrying out of the duties imposed on the manager at all reasonable times to enter any living accommodation.
- Provide the manager with such information as he may reasonably require for the purpose of carrying out his duties.
- Take reasonable care to avoid causing damage to anything which the manager is under a duty to supply, maintain or repair.
- Comply with reasonable instructions of the manager in respect of any means of escape from fire, fire prevention and the use of fire equipment.

“House in Multiple Occupation (HMO)”

This is a privately rented house or flat which is occupied by three or more unrelated persons, who share basic facilities, e.g. toilet, bathroom or living room, and who live in separate households (note that an individual person can be a separate household). The expression includes accommodation such as bedsits and shared houses (e.g. shared houses let to students or working people). Not all HMOs are licensable but the HMO Management Regulations apply to all HMO accommodation, including Section 257 HMOs.

NB: There is a question mark around the application of the HMO Management Regulations to accommodation such as a shared house which is not let out as individual rooms due to the definition of “manager”. The RLA advice however is to assume tht they apply to all HMOs.

“Lease”

This refers to a longer-term tenancy such as a lease granted for 99 or 125 years. The unit such as a flat is then owned by a flat owner under the lease. In turn flats themselves may be privately rented out.

“Mandatory HMO Licensing”

All HMOs which are occupied by five or more residents and consisting of three or more storeys are subject to mandatory HMO licensing. Licences must be obtained from the local authority.

“Modern Building Regulations/1991 or later Building Regulations”

In this report we make a number of references to compliance with modern building regulations, i.e. 1991 or later building regulations. The critical cut off date is 1st June 1992 when the 1991 Regulations came into force. If work was approved after 1st June 1991 or a building notice was given after that date then you should comply with the 1991 or later regulations, so long as the work was done so as to meet their requirements. There were transitional provisions so that if the work was approved before the 1st June 1992 under the 1985 Regulations or a building notice was given under those regulations before that date, the work would not comply with modern building regulations, even though it may have been carried out subsequent to the 1st June 1992. Unfortunately, in practice, it may be difficult to track down the old plans to establish whether or not 1991 (or later) regulations were observed.

“Privately rented”

This refers to renting out by individual or corporate landlords in the private rented sector as opposed to the social sector where the landlord will be a local authority, housing association or similar.

“Section 257 HMO”

This is a converted block of flats where the conversion does not currently comply with 1991 or later Building Regulations (modern building regulations) and more than one

third of flats in the block are privately rented out. The designation applies to the building as a whole; rather than individual flats within it.

“Selective Licensing”

Selective licensing is discretionary licensing but local authorities can apply to houses and flats which are not licensable as HMOs. Unlike under HMO licensing there are no minimum prescribed standards for fire and other amenity. There is however a mandatory condition in relation to smoke alarms, although this differs between England and Wales. For practical purposes, therefore, beyond this mandatory condition, we have assumed that no further requirements will be laid down in relation to the provision of fire precautions under selective licensing, where it applies.

“Shared house”

This refers to a house occupied by a group of sharers where the property is let as a whole to the group so that they are joint tenants. Each occupier will have their own room and share other facilities such as a living room, kitchen or bathroom. Legally, each of the occupiers has possession of the whole of the property. Where individual rooms in the house are separately let then this is regarded as a separate category for the purposes of this note.

“Social Sector”

The landlord will be a local authority, an arm's length management organisation (ALMO) or equivalent or a registered provider of social housing, e.g. a housing association. Any differences around the position of private registered providers of social housing are not addressed in this report.

“Tenancy”

This expression is used to refer to occupational agreements under which short term tenants occupy houses, flats etc.

“Tenure”

This refers to whether properties are owner/occupiers or are privately rented or rented out by a social landlord (local authority, housing association etc.).

9.2 Abbreviations

“FSO” Fire Safety Order, i.e. the Regulatory Reform (Fire Safety) Order 2005.

“HHSRS” The Housing Health and Safety Rating System imposed under the Housing Act 2004.

“HMO” House in multiple occupation.

“LACORS” Local Authority Co-ordinators Regulatory Services (now defunct).

“LGA” Local Government Association



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