



**NFCC**  
National Fire  
Chiefs Council

# Section 156 of the Building Safety Act - Understanding the changes to the Fire Safety Order

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## Purpose and Scope of the Guidance

On the 1<sup>st</sup> October 2023, Section 156, with the exception of Section 156(4), of the Building Safety Act 2022 (BSA), comes into force.

Section 156 of the BSA makes several amendments to the Regulatory Reform (Fire Safety) Order 2005 (FSO), aimed at improving fire safety in all regulated premises. These improvements form Phase 3 of the Home Office's fire safety reform programme, building on Phase 1 (the Fire Safety Act 2021) and Phase 2 (the Fire Safety (England) Regulations 2022).

This guidance is produced by the National Fire Chiefs Council (NFCC) and is intended to be informative and aid consistency in the practices of Fire Safety Regulators (FSR). It is based on current understanding and should not be deemed a proxy for statutory guidance that is issued by government. This guidance is limited to the FSO Articles which have been amended or introduced by the commencement of Section 156 of the BSA.

This guidance does not replace [Regulatory Reform \(Fire Safety\) Order 2005 Guidance Note No. 1: Enforcement](#) which continues to be the statutory guidance for enforcing authorities, or the existing NFCC guidance 'Collected Perceived Insights Into and Application of The Regulatory Reform (Fire Safety) Order 2005 For the Benefit of Enforcing Authorities'.

FSR should be aware that there is more information available on the Gov.UK website. Resources include [Check your fire safety responsibilities under section 156 of the building safety act 2022](#). It is essential that FSR have a good working knowledge of all the latest relevant guidance issued by government as it will inform enforcement decisions.

This NFCC guidance does not constitute formal legal advice. Only the courts can give a binding interpretation on a point of law. FSR should bear this in mind when using this guidance and have regard to the [Regulators' Code](#), the Regulatory Enforcement and Sanctions Act 2008, and the Legislative and Regulatory Reform Act 2006, amongst others. When dealing with any specific enforcement matter, FSR may have to obtain their own legal advice.

### Using this NFCC Guidance

This guidance is set out so that each Article, introduced or amended by Section 156 of the BSA, is given in full, followed by relevant information and comment. Amendments to or new Articles are clearly identified.

Text in green is used to highlight additions to the legislation. Red text with strike through is used to highlight where text has been removed. For example –

(6) As soon as practicable after the assessment is made or reviewed, the responsible person must **make a record of the assessment or review, which must in particular include the information prescribed by paragraph (7).**

~~(a) he employs five or more employees;~~

For assurance and completeness, readers are advised to refer to the latest available (revised) full statutory text and any explanatory notes published by government.

## NFCC Support

FSR are reminded that the NFCC provides a range of support facilities to fire and rescue authorities (FRA) to assist their fire safety technical and enforcement activities and to promote consistency.

For further information, please contact the Protection Reform Unit (PRU) at the NFCC.

## Introduction

Following the Grenfell Tower fire, the Government commissioned an Independent Review of Building Regulations and Fire Safety. Led by Dame Judith Hackitt, the final report, [Building a Safer Future](#), was published in 2018. It made 53 recommendations. All of the findings and recommendations were accepted by the Government.

Following on from this, in 2019, the Government put out a Call for Evidence seeking views on the FSO in relation to both regulation and compliance. In 2020, the Government consulted on a number of proposed changes made in response to the Call for Evidence.

The government took forward these changes through the Building Safety Bill, and in 2022 the Building Safety Act 2022 (BSA) received Royal Assent. Designed to strengthen the whole of the regulatory system for building safety, it is also a catalyst for wider improvements. This includes amending the FSO in line with the proposals previously consulted on in order to support greater compliance and effective enforcement, through the introduction of Section 156 of the BSA.

Further information about the BSA, what each part of the BSA will mean in practice, background information on the development of policy and how the BSA will affect existing legislation, can be found within the [BSA Explanatory Notes](#). Prepared by the Department for Levelling Up, Housing and Communities, they do not form part of the BSA and have not been endorsed by Parliament.

## Changes to the FSO

On the 1 October 2023, Section 156 of the BSA, with the exception of Section 156(4) (see below), comes into force. Aimed at improving fire safety in all FSO regulated buildings it strengthens the FSO by:

- improving cooperation and coordination between responsible persons (RPs)
- increasing requirements in relation to the recording and sharing of fire safety information thus creating a continual record throughout a building's lifespan
- to support greater compliance and effective enforcement
- ensuring residents have access to relevant and comprehensible information about fire safety in their building

The changes introduced by Section 156 of the BSA have the effect of amending the FSO by either adding or amending duties placed on RPs.

For example, Article 9 is amended and now requires all RPs to record their fire risk assessment. Article 21A, introduces a new requirement to provide fire safety information to residents of buildings which contain two or more sets of domestic premises.

To assist RPs in meeting their duties, the government has a range of supporting

guidance on its website; [Fire Safety: guidance for those with legal duties](#). This includes [Fire safety responsibilities under Section 156 of the Building Safety Act 2022](#) along with other new and updated guidance provided to help RPs understand what they need to do to comply with fire safety law. FSR should familiarise themselves with the official guidance available to RPs and ensure they are always referring to the latest version.

Section 156(4) of the BSA relates to a new Article, 9A, requiring RPs to ensure that anyone they appoint to assist with making or reviewing a fire risk assessment is competent. The government will commence this Article when it is ready following a robust roll-out plan. Work is currently being carried out with the fire risk assessor sector and further information will be provided by government in due course.

In the meantime, the FSO continues to place a duty on the RP to make a suitable and sufficient assessment of risk to identify the general fire precautions needed to keep people safe. FSR should continue to recommend that where the RP appoints a fire risk assessor, they check the credentials of the assessor.

## Enforcement Considerations

As is common with any new law (unless the statute directs otherwise), there is an expectation that compliance will coincide with them coming into force. Whilst efforts have been made to raise awareness of the changes to the FSO, it is inevitable that FSR will come across RPs who are not meeting the requirements placed on them at the time of commencement. Although ignorance of the law is not a defence, FSR should be mindful of the challenges associated with the introduction of new and amended legislation.

Enforcement should be proportionate to the risk generated by the non-compliance. Where FRA impose timescales, they should have regard to the practicalities associated with addressing the issues identified that may affect the RPs ability to achieve compliance in a timely manner.

Whilst this should be a consideration for any enforcement under the FSO, the impact on some RPs is likely to be greater. For example, the amendment to Article 9 now requires all RPs to have a written risk assessment. The potential demand placed on fire risk assessors by affected RPs may result in an initial inability to comply with this new requirement.

Enforcement requires professional judgement. Where an audit is undertaken compliance with any new articles, where applicable, should be used to inform the enforcement outcome of the audit and application of the EMM. FSR should clearly identify which new articles the RP has failed to comply with.

## Article 5 – Duties under this Order

5.—(1) Where the premises are a workplace, the responsible person must ensure that any duty imposed by articles 8 to 22B or by regulations made under article 24 is complied with in respect of those premises.

(2) Where the premises are not a workplace, the responsible person must ensure that any duty imposed by articles 8 to 22B or by regulations made under article 24 is complied with in respect of those premises, so far as the requirements relate to matters within his control.

(3) Any duty imposed by articles 8 to 22B or by regulations made under article 24 on the responsible person in respect of premises shall also be imposed on every person, other than the responsible person referred to in paragraphs (1) and (2), who has, to any extent, control of those premises so far as the requirements relate to matters within his control.

(4) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to —

- (a) the maintenance or repair of any premises, including anything in or on premises; or
- (b) the safety of any premises,

that person is to be treated, for the purposes of paragraph (3), as being a person who has control of the premises to the extent that his obligation so extends.

(5) Articles 8 to 22B and any regulations made under article 24 only require the taking or observance of general fire precautions in respect of relevant persons.

The amendment to Article 5 serves to extend the duties to incorporate the introduction of the new Articles. Without this amendment, Articles 22A and Article 22B would have sat outside the duties under the order as set out in Article 5.

## Article 9 – Risk Assessment

- 9.—(1) The responsible person must make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions he needs to take to comply with the requirements and prohibitions imposed on him by or under this Order.
- (2) Where a dangerous substance is or is liable to be present in or on the premises, the risk assessment must include consideration of the matters set out in Part 1 of Schedule 1.
- (3) Any such assessment must be reviewed by the responsible person regularly so as to keep it up to date and particularly if—
- (a) there is reason to suspect that it is no longer valid; or
  - (b) there has been a significant change in the matters to which it relates including when the premises, special, technical and organisational measures, or organisation of the work undergo significant changes, extensions, or conversions, and where changes to an assessment are required as a result of any such review, the responsible person must make them.
- (4) The responsible person must not employ a young person unless he has, in relation to risks to young persons, made or reviewed an assessment in accordance with paragraphs (1) and (5).
- (5) In making or reviewing the assessment, the responsible person who employs or is to employ a young person must take particular account of the matters set out in Part 2 of Schedule 1.
- (6) As soon as practicable after the assessment is made or reviewed, the responsible person must **make a record of the assessment or review, which must in particular include the information prescribed by paragraph (7).**
- ~~(a) he employs five or more employees;~~
  - ~~(b) a licence under an enactment is in force in relation to the premises; or~~
  - ~~(c) an alterations notice requiring this is in force in relation to the premises.~~
- (7) The prescribed information is—
- (a) the **significant** findings of the assessment, including the measures which have been or will be taken by the responsible person pursuant to this Order; and
  - (b) any group of persons identified by the assessment as being especially at risk.
- (8) No new work activity involving a dangerous substance may commence unless—
- (a) the risk assessment has been made; and
  - (b) the measures required by or under this Order have been implemented.

### Recording the Fire Risk Assessments

Since the introduction of the FSO, Article 9 has placed a duty on the RP to carry out a suitable and sufficient assessment of risk to identify the general fire precautions needed to keep people safe. This requirement applies to all regulated premises, except those identified in Article 6, and has not changed.

However, concerns have been raised regarding the difficulties faced by enforcing authorities to evidence compliance with this duty, where there was no requirement to record the



assessment.

The amendment to Article 9 requires RPs to record their risk assessment for all regulated premises. For most RPs, keeping a record of the risk assessment is nothing new. Either because they were already required to do so, or because it was deemed good practice.

For those businesses previously excluded from this requirement, such as the self-employed, volunteer organisations and businesses employing less than 5 people, the requirement to record the risk assessment may initially appear daunting and onerous. However, the long-term benefit of keeping a written record of the assessment will be evident when undertaking reviews, providing evidence of compliance, and meeting the duties imposed by other articles under the FSO. For example, the sharing of information as required by Articles 21A (information to residents) and 22 (co-operation and co-ordination between RPs), which will apply to many of the businesses affected by the change.

The amendments to the FSO do not include any provisions for how the risk assessment should be recorded or the format that it should take.

## **Prescribed Information**

The previous requirement to keep a written record of the risk assessment stipulated that it must include the 'significant findings'. Without any definition of this term, it was cause for confusion, and possibly contributed to the poor quality of some risk assessments.

The amendments to Article 9 introduce the requirement to record the assessment or review, which must in particular include the information prescribed in paragraph 7. The amendment to paragraph 9(7) requires that the 'findings' of the risk assessment are recorded, and no longer just those deemed 'significant'. This removes any ambiguity as to what is significant and promotes transparency of the assessment process and its conclusions.

The record should typically include the following (not-exhaustive):

- the areas in and around the building/premises which have been considered as part of the process, including, where a building contains two or more sets of domestic premises, the building's structure and external walls systems
- the fire hazards and risks identified
- any group of persons identified as being especially at risk
- the measures which have been/will be taken to remove, reduce or protect from risk
- the information, instruction and training which people need and how it will be given
- the details of any persons appointed by the RP to assist with the assessment
- the date the assessment was carried out or reviewed
- any other information as required by the FSO or any regulations made under it

For those premises already maintaining a record of the risk assessment, the changes imposed by these amendments are likely to be minimal. The amendments to the FSO do not include any provisions for how the assessment should be recorded or the format.



## **Additional Guidance**

For those premises most likely to be affected by the requirement to record their risk assessment where they previously did not, the government have published a suite of fire safety guides.

- Making your small non-domestic premises safe from fire
- Making your small paying guest accommodation safe from fire
- Making your small block of flats safe from fire

Each of these guides includes a *fire risk assessment checklist template*. Whilst use of these templates does not guarantee that the risk assessment will be suitable and sufficient, for the low-risk premises within the scope of each guide, they should provide a suitable means of capturing the required information.

## Article 9A – Risk assessment: assistance

**NOTE - At the time of publication of this document, there is no time frame for the commencement of this requirement.**

9A.—(1) The responsible person must not appoint a person to assist them with making or reviewing an assessment under article 9 unless that person is competent.

(2) A person is to be regarded as competent for the purposes of this article where the person has sufficient training and experience or knowledge and other qualities to enable the person properly to assist in making or reviewing the assessment.

(3) Where the responsible person appoints more than one person, the responsible person must make arrangements for ensuring adequate co-operation between them.

Article 9A will be a new article that aims to ensure any persons appointed by the RP to undertake or review a risk assessment are competent to do so.

The FSO already includes requirements for competency in relation to persons nominated to implement emergency procedures and persons appointed to assist in undertaking the preventive and protective measures. No similar requirement exists in relation to undertaking a risk assessment.

The risk assessment underpins the fire safety management for a premise. Where a risk assessment is undertaken by somebody not competent to do so it can result in relevant persons being exposed to serious risk of fire. Alternatively, it can result in risk assessors requiring RPs to implement excessive and expensive measures which have a negligible impact on reducing risk.

Under Article 9A, a RP must not appoint a person to assist them in the undertaking or reviewing a fire risk assessment unless that person is competent. This does not mean the RP has to appoint a person to assist. But if they do, the onus is on the RP to make sure that person, whether they are an individual or a company, is competent. Article 9A makes no reference to the competency of RP undertaking their own risk assessment.

Irrespective of any requirements introduced through Article 9A, the duty to make a suitable and sufficient assessment of the risks will remain the responsibility of the RP under Article 9 and appointing a person to assist does not change this.

The government continues to undertake work in relation to the competency of fire risk assessors and the implementation of this requirement. Further guidance for FRA will be provided closer to the commencement of Article 9A.

## Article 11 – Fire safety arrangements

11.—(1) The responsible person must make and give effect to such arrangements as are appropriate, having regard to the size of his undertaking and the nature of its activities, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) The responsible person must record the arrangements referred to in paragraph (1) ~~where—~~  
~~(a) he employs five or more employees;~~  
~~(b) a licence under an enactment is in force in relation to the premises; or~~  
~~(c) an alterations notice requiring a record to be made of those arrangements is in force in relation to the premises.~~

Since the introduction of the FSO, Article 11 has placed a duty on the RP to implement appropriate measures for the effective planning, organisation, control, monitoring and review of the preventative and protective measures which are needed to keep people safe. This requirement applies to all regulated premises, except those identified in Article 6, and has not changed.

Similarly to the change to Article 9, exceptions which previously existed have been removed and the amendment to Article 11 now requires that all RPs record their fire safety arrangements in all regulated premises.

The amendment to Article 11 reinforces the importance and value of the Responsible Person's duties on the ongoing management of fire safety to keep people who visit, work and stay in their premises safe. It removes any doubt as to the obligations placed on RPs by requiring all regulated premises to record their fire safety arrangements. In turn, this will assist RPs to more easily demonstrate compliance and aid authorities when enforcing the FSO.

For some RPs, a simple fire safety policy may be sufficient. For others, a more comprehensive document will be required, detailing, for example, roles and responsibilities within the organisation, identities of persons nominated to carry out specific tasks and the arrangements for checking and maintaining fire safety equipment.

The amendments to the FSO do not include any provisions for how the arrangements should be recorded or the format that they should take.

## Article 21A – Provision of information to residents of domestic premises

21A.—(1) This article applies in relation to a building containing two or more sets of domestic premises.

(2) The responsible person must give residents of the domestic premises comprehensible and relevant information about the relevant fire safety matters.

(3) The relevant fire safety matters are—

- (a) the risks to residents of the domestic premises identified by the risk assessment;
- (b) the preventive and protective measures;
- (c) the name of the responsible person and an address in the United Kingdom at which the responsible person, or someone acting on their behalf, will accept notices and other documents;
- (d) the identity of any person appointed by the responsible person to assist them with making or reviewing an assessment under article 9;
- (e) the identity of any persons nominated by the responsible person under article 13(3)(b);
- (f) any risks of which the responsible person has been informed under article 22(1)(c);
- (g) any other matters specified in regulations made by the relevant authority.

(4) The information is to be provided at such times, and in such form, as may be specified in regulations made by the relevant authority.

(5) The responsible person must keep records of the relevant fire safety matters.

(6) The “relevant authority”—

- (a) in relation to premises in England, means the Secretary of State;
- (b) in relation to premises in Wales, means the Welsh Ministers.

(7) Regulations under this article are to be made by statutory instrument.

(8) A statutory instrument containing regulations made by the Secretary of State under this article is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) A statutory instrument containing regulations made by the Welsh Ministers under this article is subject to annulment in pursuance of a resolution of Senedd Cymru.

The FSO has always placed a duty on RPs to provide employees and contractors with relevant information on risks identified in the risk assessment and details of preventative and protective measures taken in their workplace. However, the FSO did not previously explicitly require that RPs provide similar information to other relevant persons, in particular residents.

The first specific requirement to provide information to residents was introduced in January 2023 by the commencement of Fire Safety (England) Regulations 2022 (FSER). Only applicable in England, it requires the RP in all buildings which contain 2 or more sets of domestic premises, regardless of height, to provide prescribed, information to residents including instructions on what to do in the event of a fire (FSER Regulation. 9) and information relating to fire doors (FSER Regulation 10).

Article 21A is a new article and is applicable to all buildings containing two or more sets of domestic premises. It complements the information required by the FSER and serves to ensure that residents in a building are provided with relevant information on fire safety matters. Information which must be given to residents is set out below.

- **The risks to residents identified in the risk assessment**

The requirement to provide information on the risks to residents identified in the risk assessment mirrors the requirements for information to employees under Article 19. Given the amendments to Article 9 which require the risk assessment to be recorded in full for all FSO regulated premises, the RP should already have a record of this information.

- **The preventive and protective measures**

The requirement to provide information on the preventive and protective measures mirror the requirements for information to employees under Article 19. A definition of preventative and protective measures is provided in Article 2.

- **The name and address of the RP**

The specific wording of the requirements indicates that residents should be provided with an address in the United Kingdom at which the RP, or someone acting on their behalf, will accept notices and other documents. It reflects the wording within the FSER Regulation 4 for the information which must be placed in the premises secure information box of a high-rise residential building.

The provision of this information may be in addition to other information provided by landlords or managing agents regarding who residents should contact if they have a query or concern, particularly in regard to fire safety. However, in the absence of this information, the introduction of Article 21A ensures that all residents, and by extension, FRA should have a means of obtaining contact details of the RP for the building.

- **The identity of persons appointed to assist with undertaking or reviewing the risk assessment**

The RP must record the identity of the individual (their name), and/or if applicable their organisation, engaged by them to undertake or review the risk assessment – i.e., the fire risk assessor. Although this information needs to be provided to residents, it will also assist FRA with enforcement, particularly where the risk assessment is not deemed suitable and sufficient.

- **The identity of persons nominated to implement fire-fighting measures**

More so than the other information listed under Art 21A, the workplace origins of this requirement are evident. Over the years, the expectation that firefighting equipment such as fire extinguishers or hose reels are provided in residential buildings has been significantly reduced due to concerns around both vandalism and people putting themselves at risk attempting to tackle a fire. Article 13 sets the requirement to provide appropriate firefighting equipment and there will be residential buildings where no such equipment is provided.

Where equipment is provided, this should already be communicated to residents under the requirement to provide information on the protective measures (see above) however the RP will also need to communicate to residents who may be expected to use them. Implementation of this requirement may serve to reassure residents who have concerns that their building either has no fire extinguishers or that they wouldn't feel comfortable trying to use them.

- **Any risks identified by other RPs within the building**

In premises with multiple RPs, Article 22 already requires RPs to inform each other of the risks to relevant persons arising out of or in connection with the conduct by him of his undertaking.

Whilst multi-occupied residential buildings by their nature often result in there being more than one RP (e.g., building owner and managing agent), in most instances they will be working as one to manage fire safety (e.g. the commissioning and production of a single risk assessment). The introduction of this new requirement will be particularly applicable to mixed-use buildings where the different RPs operate or exist with a level of independence, for example, a commercial premises beneath a residential building.

Although the legislation states the information must be comprehensible and relevant, it does not include a requirement for the RP to confirm that the information has been understood. Regardless, the RP should recognize the overarching aim of this requirement is to ensure residents are safer, and feel safer, by understanding how fire safety in their building is managed.

There is presently no guidance on the format or structure the information must take. Furthermore, and unlike the FSER, there are no stated timescales for providing the information or frequencies within which the information should be reissued to residents. Paragraph 21A(4) of the legislation does provide a mechanism for government to mandate a frequency and format in the future if such a need arises although it is understood there is no intention to introduce that at present or in the near future.

In the absence of any such regulations, it is reasonable to expect that the information will be provided as soon as reasonably practicable after a new resident moves in to their premises and again, when any changes are made to the information specified in Article 21A(3). For example, when there is a change of RP or the risk assessment is updated.

Ultimately, it will be for the RP to determine the most appropriate method to provide this information to residents although it would be reasonable to expect the information required under Article 21A and under the FSER is brought together in a single information pack.

The RP must keep records of the information provided to residents under this article, most of which will already be captured as part of the requirement to record the findings of the risk assessment (see Article 9) and to comply with FSER (for premises in scope). There is no requirement to record when or how the information is provided, as this should be covered under the existing duties imposed by Article 11.

## Article 22 – Co-operation and co-ordination between responsible persons

22.—(A1) A person who is a responsible person in relation to any premises must take such steps as are reasonably practicable to ascertain whether any other responsible person shares, or has duties in respect of, the premises.

(1) Where two or more responsible persons share, or have duties in respect of, premises (whether on a temporary or a permanent basis) each such person must—

(za) inform the other responsible persons concerned of that person's name and an address in the United Kingdom at which that person, or someone acting on their behalf, will accept notices and other documents;

(zb) inform the other responsible persons concerned of the part of the premises for which that person considers themselves to be a responsible person, and keep a record of that information;

(a) co-operate with the other responsible person concerned so far as is necessary to enable them to comply with the requirements and prohibitions imposed on them by or under this Order;

(b) (taking into account the nature of his activities) take all reasonable steps to co-ordinate the measures he takes to comply with the requirements and prohibitions imposed on him by or under this Order with the measures the other responsible persons are taking to comply with the requirements and prohibitions imposed on them by or under this Order; and

(c) take all reasonable steps to inform the other responsible persons concerned of the risks to relevant persons arising out of or in connection with the conduct by him of his undertaking.

(2) Where two or more responsible persons share premises (whether on a temporary or a permanent basis) where an explosive atmosphere may occur, the responsible person who has overall responsibility for the premises must co-ordinate the implementation of all the measures required by this Part to be taken to protect relevant persons from any risk from the explosive atmosphere.

There are many scenarios where there may be multiple RPs for a premises. The most obvious examples being multi-occupied premises, or premises where the occupier and the owner are different entities. In such instances, RPs are required to co-operate with each other and co-ordinate their actions to ensure compliance with the FSO.

FSR have long held concerns about compliance with the duty to cooperate and coordinate with other RPs in multi-occupied premises. RPs were often unaware of their duties under article 22 and enforcing authorities were faced with the challenge of identifying relevant RPs and establishing whether or not the duties imposed by Article 22 had been complied with.

The changes to Article 22 are intended to address this, and whilst they introduce a number of prescriptive requirements, they arguably represent measures which were always necessary to demonstrate compliance with article 22.

Article 22(A1) places a new duty on the RP to *take such steps as are reasonably practicable to ascertain whether any other responsible person shares, or has duties in respect of, the premises*. This will require RP's to be pro-active in their approach to



identifying whether there are other RP's for their premises.

### **Information to other RPs**

Upon identifying that there is more than one RP for a premises, each RP is required to share specific information with the other RPs. The information that each RP must share is set out below.

- **Their name and UK address**

In some cases, this will be the name of the limited company or corporation. For sole traders or partnerships, who are not trading as a limited company, it will be the name of the individual(s). In respect of a UK address, this should normally be the registered address of the company or the principal office of the business. In some cases, an RP may specify an alternative UK address where someone acting on behalf of the RP will accept notices and other documents. For example, the address of their accountants.

- **The part of the premises they are responsible for**

RPs will need to establish and keep a record of the parts of the premises to which they consider themselves responsible. Whilst this requirement will not in itself settle the issue of which RP is responsible for different parts of the premises, it will make it easier to identify where confusion or conflict exists. In most cases, the information will be contained within any lease or tenancy agreement but where this is not the case, the RP may need to seek legal advice to clarify the extent of their responsibilities.

The requirements of Article 22 apply equally to all RPs. However, in multi-occupied buildings it would be expected that the landlord/freeholder of the building will have, and therefore be able to share, information on the leaseholders/tenants (i.e., the other RPs) and the parts of the premises they are responsible for.

Where premises have been sublet, this information may not be known. In which case, the onus will be on both the occupier and their landlord to ensure the information is made available to other RPs when complying with this article.

## Article 22A – Provision of information to new responsible person

22A.—(1) Paragraph (2) applies where a person (the “outgoing person”) ceases to be a responsible person for premises and another person (the “new responsible person”) becomes a responsible person for the premises in place of the outgoing person.

(2) The outgoing person must give the new responsible person any relevant fire safety information held by the outgoing person.

(3) “Relevant fire safety information” means—

- (a) records kept under article 9(6) of assessments and reviews under article 9;
- (b) the identity of any person appointed by the responsible person to assist them with making or reviewing an assessment under article 9;
- (c) the name of any other person who is a responsible person in relation to the premises and an address in the United Kingdom at which that person, or someone acting on their behalf, will accept notices and other documents (where known);
- (d) where the premises consist of or include a higher-risk building, the identity of any other person who is an accountable person in relation to the premises (where known);
- (e) any information given under regulation 38 of the Building Regulations 2010 (S.I. 2010/2214) (fire safety information);
- (f) any other matters specified in regulations made by the relevant authority.

(4) The information is to be provided at such times, and in such form, as may be specified in regulations made by the relevant authority.

(5) A responsible person must keep records of relevant fire safety information.

(6) In this article—

“accountable person” has the meaning given by section 72 of the Building Safety Act 2022;  
“higher-risk building” has the meaning given by section 65 of that Act;  
“relevant authority”—

- (a) in relation to premises in England, means the Secretary of State;
- (b) in relation to premises in Wales, means the Welsh Ministers.

(7) Regulations under this article are to be made by statutory instrument.

(8) A statutory instrument containing regulations made by the Secretary of State under this article is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) A statutory instrument containing regulations made by the Welsh Ministers under this article is subject to annulment in pursuance of a resolution of Senedd Cymru.

As part of the government’s wider safety reforms under the Building Safety Act, measures are being implemented to ensure the preservation of relevant building safety information over a building’s lifetime as part of the ‘golden thread’ provisions which will be applicable to higher risk buildings. However, there are similar challenges regarding access to building information for all FSO regulated premises. Currently, there is no obligation for any RP to prepare or provide fire safety information to a new building owner or occupier.

Article 22A is a new article and requires departing RPs to provide *relevant fire safety information* to successive RPs. The aim of Article 22A is to ensure that when there is a change in the RP, the new RP is provided with information to assist them in meeting their own duties under the FSO.

The relevant fire safety information which must be passed to the incoming RP is set out in Article 22A and includes –

- Fire risk assessment
- Any records relating to the review of the risk assessment
- The name of the fire risk assessor
- Name and contact address for any other RPs
- Name and contact address of the accountable person (higher risk premises only – see Article 22B)
- Any information given under regulation 38 of the Building Regulations 2010

The wording of Article 22A puts an absolute requirement on all RPs to keep a record of the information above regardless of whether a change of RP is intended or expected. In most cases, this will be information already captured by the RP during the course of them carrying out their duties under the FSO.

Although not explicitly stated, the legislation would likely require the outgoing RP to share the information before they depart.

In some cases, where the RP is an occupier as opposed to a building owner, the departing RP may have no knowledge of, or contact with, the incoming RP. Additionally, the premises may remain unoccupied for a period of time after the RP has left or ceased trading. In such cases, it would be reasonable for the outgoing RP to provide all the required information to the building owner or manager so that they can forward this onto the incoming RP when known.

Although not mandated, it would be a recommendation for outgoing RPs keep a written record of the steps taken to ensure information is made available for the incoming RPs irrespective of whether it is shared directly, or via an intermediary such as the building owner.

Whilst there is a requirement to provide a copy of the RA to the incoming RP, this does not take away from the incoming RP's requirement to carry out their own fire risk assessment. The information captured within a suitable and sufficient RA will assist the incoming RP in undertaking their own RA by understanding how certain aspects of fire safety were managed (or perceived to be managed) by the outgoing RP.

The legislation does provide a mechanism for government to extend the relevant fire safety information that must be provided and mandate a frequency and format for the information to be provided, although it is understood there is no intention to introduce that at present or in the near future.

## Article 22B – Co-operation with accountable persons

22B.—(1) This article applies in relation to premises which consist of or include a residential unit in a higher-risk building.

(2) The responsible person (“P”) must take such steps as are reasonably practicable to ascertain whether there are one or more other persons who are accountable persons in relation to the premises.

(3) If there are, P must co-operate with each accountable person for the purpose of the accountable person carrying out their duties under the Building Safety Act 2022.

(4) In this article—

“accountable person” has the meaning given by section 72 of the Building Safety Act 2022;

“higher-risk building” has the meaning given by section 65 of that Act;

“residential unit” has the meaning given by section 115 of that Act.

The Building Safety Act 2022 (BSA) provides a framework for reforming building safety and in England, has established the role of the Accountable Person who will have overall responsibility for safety in higher risk premises. Article 22B does not apply to Wales.

Article 22B represents a new provision as the role of the Accountable Person did not exist when the FSO came into force in 2006. This requirement applies to all RPs for premises in a higher-risk building. The RPs must take reasonable steps to identify any Accountable Person(s) in the building and cooperate with them for the purpose of carrying out their respective duties to collectively manage building and fire safety for the entire building. There is a reciprocal duty co-operation between Accountable Persons and RPs in section 109 of the BSA.

To understand the applicability of Article 22B, it is necessary to understand the following new terms which are introduced and defined by the BSA.

- An Accountable Person is an individual or organisation that owns or has a legal obligation to repair any common parts of the building.
- Higher-risk building means a building in England that: -
  - (a) is at least 18 metres in height or has at least 7 storeys, and
  - (b) contains at least 2 residential units
- Residential unit means: -
  - (a) a dwelling, or
  - (b) any other unit of living accommodation.

Note – definition of a higher risk building under the BSA differs slightly to the definition of a high-rise residential building under the FSER.

The purpose of Article 22B is to ensure RPs (who are not also Accountable Persons) support the Accountable Person in complying with the additional, more stringent requirements placed upon them through the BSA, although at the time of publication, there remains a lack of detailed understanding as to what this will entail. Accordingly, whilst Article 22B will come into force on 1 October 2023, there will be no immediate impact on RPs as requirements for Accountable Persons in relation to occupied higher-risk buildings are not due to commence until April 2024.

## Article 29 – Alterations Notices

- 29.—(1) The enforcing authority may serve on the responsible person a notice (in this Order referred to as “an alterations notice”) if the authority is of the opinion that the premises—
- (a) constitute a serious risk to relevant persons (whether due to the features of the premises, their use, any hazard present, or any other circumstances); or
  - (b) may constitute such a risk if a change is made to them or the use to which they are put.
- (2) An alterations notice must—
- (a) state that the enforcing authority is of the opinion referred to in paragraph (1); and
  - (b) specify the matters which in their opinion, constitute a risk to relevant persons or may constitute such a risk if a change is made to the premises or the use to which they are put.
- (3) Where an alterations notice has been served in respect of premises, the responsible person must, before making any of the changes specified in paragraph (4) which may result in a significant increase in risk, notify the enforcing authority of the proposed changes.
- (4) The changes referred to in paragraph (3) are—
- (a) a change to the premises;
  - (b) a change to the services, fittings or equipment in or on the premises;
  - (c) an increase in the quantities of dangerous substances which are present in or on the premises;
  - (d) a change to the use of the premises.
- (5) An alterations notice may include a requirement that, in addition to the notification required by paragraph (3), the responsible person must —
- (a) take all reasonable steps to notify the terms of the notice to any other person who has duties under article 5(3) in respect of the premises;
  - ~~(b) record the information prescribed in article 9(7), in accordance with article 9(6);~~
  - ~~(c) record the arrangements required by article 11(1), in accordance with article 11(2);~~
  - ~~and~~
  - (d) before making the changes referred to in paragraph (3), send the enforcing authority the following —
    - (i) a copy of the risk assessment; and
    - (ii) a summary of the changes he proposes to make to the existing general fire precautions.
- (6) An alterations notice served under paragraph (1) may be withdrawn at any time and, for the purposes of this article, the notice is deemed to be in force until such time as it is withdrawn or cancelled by the court under article 35(2).
- (7) Nothing in this article prevents an enforcing authority from serving an enforcement notice or a prohibition notice in respect of the premises.

An Alterations Notice can be served where a FRA is of the opinion that a premises, in itself, or should a change be made to the premises or its use, it could lead to a foreseeable, significant increase in risk in the event of a fire. The effect of an Alterations Notice is that the RP must notify the FRA of any proposed changes.

As well as requiring the RP to notify the FRA of any changes to the premises, under Article 29(5), the FRA could impose a small number of additional, discretionary requirements. This included a requirement to keep a record of the risk assessment and fire safety arrangements.

With the amendments made to Article 9 and 11 now mandating this requirement for all premises, these additional options are redundant.

## Article 32 – Offences

32.—(1) It is an offence for any responsible person or any other person mentioned in article 5(3) to—

- (a) fail to comply with any requirement or prohibition imposed by articles 8 to 22B and 38 (fire safety duties) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- (b) fail to comply with any requirement or prohibition imposed by regulations made, or having effect as if made, under article 24 where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- (c) fail to comply with any requirement imposed by article 29(3) or (4) (alterations notices);
- (d) fail to comply with any requirement imposed by an enforcement notice;
- (e) fail, without reasonable excuse, in relation to apparatus to which article 37 applies (luminous tube signs)—
  - (i) to ensure that such apparatus which is installed in premises complies with article 37 (3) and (4);
  - (ii) to give a notice required by article 37(6) or (8), unless he establishes that some other person duly gave the notice in question;
  - (iii) to comply with a notice served under article 37(9).

(2) It is an offence for any person to—

- (a) fail to comply with article 23 (general duties of employees at work) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;
- (b) make in any register, book, notice or other document required to be kept, served or given by or under, this Order, an entry which he knows to be false in a material particular;
- (c) give any information which he knows to be false in a material particular or recklessly give any information which is so false, in purported compliance with any obligation to give information to which he is subject under or by virtue of this Order, or in response to any inquiry made by virtue of article 27(1)(b);
- (d) obstruct, intentionally, an inspector in the exercise or performance of his powers or duties under this Order;
- (e) fail, without reasonable excuse, to comply with any requirements imposed by an inspector under article 27(1)(c) or (d);
- (f) pretend, with intent to deceive, to be an inspector;
- (g) fail to comply with the prohibition imposed by article 40 (duty not to charge employees);
- (h) fail to comply with any prohibition or restriction imposed by a prohibition notice.

(3) Any person guilty of an offence under paragraph (1)(a) to (d) and (2)(h) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.

(4) Any person guilty of an offence under paragraph (1)(e)(i) to (iii) is liable on summary conviction to a fine ~~not exceeding level 3 on the standard scale.~~



(5) Any person guilty of an offence under paragraph (2)(a) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(6) Any person guilty of an offence under paragraph (2)(b), (c), (d) or (g) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Any person guilty of an offence under paragraph (2)(e) or (f) is liable on summary conviction to a fine ~~not exceeding level 3 on the standard scale~~.

Article 32 sets out the possible offences under the FSO as well as the maximum sentences, be they custodial or fines. Some offences are only punishable via fines.

The amendments to Article 32 increase the maximum level of fines for the offences below to the same level as other similar offences.

- Failing to comply with requirements relating to the installation of luminous tube signs.
- Impersonating an inspector
- Failing to comply with requirements of an inspector including providing access to records expressly required by the FSO (e.g. RA)

These offences were previously subject to a maximum of level 3 fines (capped at £1,000) but the amendment will increase this to unlimited fines. These changes will make offences under the FSO consistent with similar offences in other legislation such as the Building Safety Act and the Health and Safety at Work Act.

The new level of fines will only take effect from the date the new legislation comes into force. If an offence is committed before 1 October 2023, then the previous level of fines would be applied by the courts when sentencing for the relevant offence.

Note: Article 32 still refers to a level 5 fine on the standard scale which was previously capped in the Magistrates Court at £5000. However, for offences committed after the 13 March 2015 Magistrate Courts have been able to impose unlimited fines.

There is an additional change to the offence set out in paragraph 32(1)(a), which has been extended to incorporate Article 22A and Article 22B.

## Article 50 – Guidance

**50.**—(1) The Secretary of State must ensure that such guidance, as he considers appropriate, is available to assist responsible persons in the discharge of the duties imposed by articles 8 to 22B and by regulations made under article 24.

(1A) Where in any proceedings it is alleged that a person has contravened a provision of articles 8 to 22B or of regulations made under article 24 ~~in relation to a relevant building (or part of the building)~~—

(a) proof of a failure to comply with any applicable ~~risk-based~~ guidance may be relied on as tending to establish that there was such a contravention, and

(b) proof of compliance with any applicable ~~risk-based~~ guidance may be relied on as tending to establish that there was no such contravention.

(2) In relation to the duty in paragraph (1), the guidance may, from time to time, be revised.

(2A) Before revising or withdrawing any risk based guidance in relation to relevant buildings the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(3) The Secretary of State shall be treated as having discharged his duty under paragraph (1) where—

(a) guidance has been made available before this article comes into force; and

(b) he considers that the guidance is appropriate for the purpose mentioned in paragraph (1).

(4) In this article—

“relevant building” means a building in England containing two or more sets of domestic premises;

“risk based guidance” means guidance under paragraph (1) about how a person who is subject to the duties mentioned there in relation to more than one set of premises is to prioritise the discharge of those duties in respect of the different premises by reference to risk.

Article 50 requires the government to ensure guidance is available to assist RPs with complying with the duties imposed on them by the FSO. The term “Article 50 guidance” is commonly used by enforcing authorities to distinguish between official guidance produced by the government and other relevant fire safety guidance (e.g. British Standards, guidance from trade associations).

Irrespective of its origins, a common retort for not following guidance is that “it’s just guidance” and both RPs and enforcing authorities have sometimes struggled to gauge the extent that largely prescriptive guidance should be followed in what is otherwise a risk-based safety regime.

In 2022, the FSO was amended to give greater weight and status to guidance issued in support of the Fire Safety Act 2021 – i.e., guidance around prioritisation of fire risk assessments - to encourage compliance.

The amendments as a result of Section 156 of the BSA extend this enhanced status to all Article 50 guidance. Compliance with or deviation from guidance issued under Article 50 may be relied upon as tending to establish whether or not there was a breach of the

FSO regardless of the premises type.

This means both RPs and FSR must have regard to any such guidance which assists RPs in meeting their duties under the FSO. If an RP chooses not to follow statutory / Article 50 guidance, they should be able to clearly evidence the reasoning for not doing so.