



**HAMPSHIRE  
FIRE AND  
RESCUE  
AUTHORITY**

Purpose: Approved

Date **22 MARCH 2018**

Title **POSITION STATEMENT FOR BUILDING REGULATIONS, PLANNING AND LEGISLATION**

Report of Chief Officer

### EXECUTIVE SUMMARY

1. Hampshire Fire and Rescue Service is committed to making life safer for the people who live, work in or visit Hampshire as well as reducing damage to property, the economy and the environment from the effects of fire. Our fire engineering consultation and fire safety strategy is to ensure buildings are safe and sustainable throughout the life cycle of the building for those who live and work in them and to enable the buildings to be used for many decades.

The current fire safety legislation and planning regulations have seen recent political scrutiny because of the tragic Grenfell Tower fire. An independent review into building regulations and fire safety has been commissioned and is being led by Dame Judith Hackitt. Hampshire Fire and Rescue Service has already submitted evidence to this review.

2. Accordingly, the Fire and Rescue Authority works to encourage local authorities, Building Control Bodies (BCBs), building owners and developers to consult with Hampshire Fire and Rescue Service at an early stage. Engagement at an early stage improves the efficiency of the consultation process, which is to the benefit of all parties concerned: it reduces the likelihood of costly delays in a project, improves public and firefighter safety, minimises environmental impact and can reduce the economic cost of fire.
3. Hampshire Fire and Rescue Authority has established a working group led by Members and supported by officers with a focus on the Fire and Rescue Service being statutory consultees at the planning stage of new, refurbished and change of use of buildings. The purpose of the Members' Working Group was to enable the Fire Authority to develop an informed view as to the benefits of early consultation within different premises and risk types and to assist the Service in further developing its fire engineering and consultation strategy.

4. As a result, the Members' Working Group has developed a Position Statement to lobby for the Fire and Rescue Service to be statutory consultees at the planning stage for building construction and change of use. The Position Statement is at Appendix A.

## BACKGROUND

### 5. National Picture

#### Planning Refurbishment and Maintenance Legislation

Buildings are subject to a complex **system** of requirements throughout their life cycle, covering the phases of planning, design, construction, occupation, refurbishment (and demolition). The complexity of the regulatory system comes partly from the sheer scale of requirements. There are several thousand pages of primary and secondary legislation, statutory and approved guidance, industry advice and competence frameworks within which specific fire safety requirements sit.

The Regulatory system can be focused onto four elements:

#### a) **Secure planning permission**

The fire safety aspects of the regulatory framework surrounding the requirement to secure planning permission for the development of a new building – as primarily set out in the Town and Country Planning Act 1990.

#### b) **Creation of a new building**

The fire safety aspects of the regulatory framework surrounding the creation of a new building – as primarily set out in the Building Act 1984, the Building Regulations 2010 and the Approved Documents (including construction materials and workmanship).

#### c) **Handling of refurbishments.**

The fire safety aspects of the regulatory framework surrounding the handling of refurbishments.

#### d) **Occupation (and ongoing maintenance) of the common parts/whole of a building**

The fire safety aspects of the regulatory framework surrounding the occupation (and ongoing maintenance) of the common parts/whole of a building – as primarily set out in the Regulatory Reform (Fire Safety) Order 2005, associated fire risk assessment documents and the Housing Act 2004 and Housing Health and Safety Rating System Regulations 2005.

There are also several other relevant regulatory requirements such as those governing fire safety on the building site e.g. where a high rise is being

constructed or refurbished (as primarily set out in the Construction (Design and Management) Regulations 2015).

### The planning system focus

The focus of the planning system is on the development and use of land. It is a general principle that planning should not seek to duplicate other regulatory regimes. In this context, fire safety considerations are not normally the subject of discussion at the planning application stage. An exception to this position is in relation to opportunities for emergency service vehicles to access buildings. Given the limited role of planning there is no requirement that the individuals making the application, or those considering it, have any specific fire safety-related knowledge.

Local Planning Authorities (LPAs) are required to consult certain bodies (known as statutory consultees) before granting planning permission for certain types of development. The two main regulatory authorities for the later stages in the building life cycle (BCBs and fire and rescue services) are not statutory consultees, as there is an understanding that fire safety issues will be picked up as part of the building control process.

### Local Picture

Hampshire Fire and Rescue Service are currently consulted in the “building consultation phase” on buildings where the Fire Safety order will apply. The BCBs, can as it stands, consult with us at any stage from planning through the building phase and up to when the building is completed prior to the building being occupied. BCBs will not always consult with us until they are satisfied that all regulations have been met; this can be very late on in the construction. HFRS are generally not consulted during the planning process for commercial developments.

In practice this means that HFRS does not receive consultations until late in the build process, ordinarily at a stage where significant changes are costly and disruptive to the building process.

Two recent examples that illustrate the type of issues that HFRS can be presented with are detailed below:

- a) HFRS prohibited parts of a brand-new student accommodation block on the day of occupation, due to an inadequate fire alarm system and inappropriate positioning of cooking facilities adjacent to the exit door. The developers were unable to occupy parts of the building for 2 months while the issues were rectified.
- b) HFRS are currently trying to resolve an issue within a care home where the proposed suppression system may not be appropriate for the risk and the proposals regarding the fire alarm system and evacuation protocols are not compatible.

## Central Government

Since the release of Dame Judith Hackitt's independent review interim report of Building Regulations and fire safety in December 2017 the Ministry of Housing, Communities and Local Government issued a letter on 15 February to Local Authorities and Chief Fire Officers highlighting recommendations of the interim report.

The letter is attached in Appendix B. One of the recommendations highlighted in this letter relevant to the building control system and expressed by Dame Judith in her interim report is:

*"Consultation by building control bodies and by those commissioning or designing buildings should take place early in the process and fire and rescue service advice should be fully taken into account. The aim should be to secure their input and support at the earliest stage possible so that fire safety can be fully designed in".*

## HFRA Position

Hampshire Fire and Rescue Authority proactively endorses the installation of sprinkler systems as detailed within the HFRA Position Statement on sprinklers in 2012.

With respect to building regulations, planning and legislation, The Authority aspire to influence, at all Government levels, the proposal for the Fire and Rescue Service to be statutory consultees at the planning stage for:

- High Rise Housing, Schools, Hotels, High Rise Office Blocks, large development sites and National Health buildings including other buildings providing care with immediate effect
- Change in use/conversions of any building to residential accommodation, where the fire safety order will apply
- Major refurbishments of residential accommodation where the fire safety order will apply

Accordingly, the Authority works to encourage local authorities, Building Control Bodies, building owners and developers to consult with Hampshire Fire and Rescue Service at an early stage, as this has been proven to improve the efficiency of the consultation process, which is to the benefit of all parties concerned: it reduces the likelihood of costly delays in the project; improves public and firefighter safety; minimises environmental impact and can reduce the economic cost of fire.

## SUPPORTING OUR SERVICE PLAN AND PRIORITIES

6. The overarching aim of the Service Plan 2015 – 2020 is for communities to feel safe and secure living and working in Hampshire. By working together with other emergency services, local authorities and other agencies as "Team

Hampshire” HFRS can keep communities safe and secure. The Position Statement strongly contributes to the overarching aim of the Service Plan.

### CONSULTATION

7. Hampshire Fire and Rescue Authority has recently hosted four officer-facilitated debates which has enabled councillors from the constituent authorities and officers from the Community Fire Safety Department of HFRS to discuss the developing Position Statement and reflect the view of those constituent authorities to be considered.

### RESOURCE IMPLICATIONS

8. Whilst no specific additional resource requirements have been identified because of early consultation; it is clear that a more efficient way of working will develop. Any significant change in workloads of the Fire Engineering and Consultation team (FECT) will be monitored; these changes are dependent on the building stock and requirements within Hampshire.

### LEGAL IMPLICATIONS

9. To influence a change in Fire and Rescue Services’ involvement (and the inclusion of Fire Safety) as a statutory consultee will require an amendment of the National Planning Policy Framework.

### PEOPLE IMPACT ASSESSMENT

10. The proposals in this report are considered compatible with the provisions of the European Convention on Human Rights, the Human Rights Act 1998, and the Race Relations (Amendment) Act 2000.
11. The HFRS Position Statement on building regulations, Planning and Fire Safety legislation is designed to reduce risk to those people most vulnerable within our communities. As such it is considered that this proposal does not adversely affect any groups of people.

### CONCLUSION

12. Hampshire Fire and Rescue Authority play a key leadership role in promoting a better understanding amongst those involved in the construction process, of the benefits of early consultation with the Fire and Rescue Service, with respect to Fire Safety and Fire Engineered Solutions.

If the Authority’s position is adopted locally or by a change in the National Planning Policy Framework, it would reduce unnecessary delays and expense for developers, reduce the burden on HFRS resources and ensure that operational crews have the appropriate level of site specific risk information at the earliest possible time. Adoption of this approach will benefit the public and

minimise community risk by ensuring buildings are constructed, maintained and refurbished to ensure they are fire safety compliant for the people who occupy them.

HFRA strongly recommends that all Local Authorities consult with Hampshire Fire and Rescue Service on a voluntary basis whilst the Authority continue to influence at Government level the Fire and Rescue Service's proposal to be involved as statutory planning consultees.

#### RECOMMENDATION

13. That the Position Statement in Appendix A is accepted as the Hampshire Fire and Rescue Authority's position on the FRS being statutory consultees at the planning stage in respect to Fire safety.
14. That Fire Authority Members promote the new Position Statement.

#### APPENDICES ATTACHED

15. Appendix A – Hampshire Fire and Rescue Authority POSITION STATEMENT FOR BUILDING REGULATIONS, PLANNING AND LEGISLATION
16. Appendix B – letter from Ministry of Housing, Communities & Local Government

#### BACKGROUND PAPERS

Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Interim Report –

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/668831/Independent\\_Review\\_of\\_Building\\_Regulations\\_and\\_Fire\\_Safety\\_web\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/668831/Independent_Review_of_Building_Regulations_and_Fire_Safety_web_accessible.pdf)

Sprinkler Strategy document – HFRA 2012 –

[https://hantsfire.sharepoint.com/sites/SMT/SMT/SMT\\_Sec\\_Docs/Hampshire%20Fire%20and%20Rescue%20Authority/HFRA%20Meetings/2012/Documents/2012%2002%2009%20HFRA%20Sprinklers%20Strategy.doc?web=1](https://hantsfire.sharepoint.com/sites/SMT/SMT/SMT_Sec_Docs/Hampshire%20Fire%20and%20Rescue%20Authority/HFRA%20Meetings/2012/Documents/2012%2002%2009%20HFRA%20Sprinklers%20Strategy.doc?web=1)

Contact:

Area Manager Rob Cole, Head of Community Safety [rob.cole@hantsfire.gov.uk](mailto:rob.cole@hantsfire.gov.uk)  
07918887600

**The checklist at the beginning of this template MUST be completed before submission to the PA Team.**



**HAMPSHIRE  
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AUTHORITY**

## **Appendix A**

Date **22 MARCH 2018**

### **POSITION STATEMENT FOR BUILDING REGULATIONS, PLANNING AND LEGISLATION**

Hampshire Fire and Rescue Authority play a key leadership role in promoting a better understanding amongst those involved in the construction process, of the benefits of early consultation with the Fire and Rescue Service, with respect to Fire Safety and Fire Engineered Solutions.

Accordingly, the Authority works to encourage local authorities, Building Control Bodies, building owners and developers to consult with Hampshire Fire and Rescue Service at an early stage, as this has been proven to improve the efficiency of the consultation process, which is to the benefit of all parties concerned: it reduces the likelihood of costly delays in the project; improves the public and firefighter safety; minimises environmental impact and can reduce the economic cost of fire.

Hampshire Fire and Rescue Authority proactively endorses the installation of sprinkler systems as detailed within the HFRA Position statement on sprinklers in 2012.

With respect to building regulations, planning and legislation, The Authority aspire to influence, at all Government levels, the proposal for the Fire and Rescue Service to be statutory consultees at the planning stage for:

- High Rise Housing, Schools, Hotels, High Rise Office Blocks, large development sites and National Health buildings including other buildings providing care with immediate effect
- Change in use/conversions of any building to residential accommodation, where the fire safety order will apply
- Major refurbishments of residential accommodation where the fire safety order will apply.

To influence a change in Fire and Rescue Service's involvement (and the inclusion of Fire Safety) as a statutory consultee will require an amendment of the National Planning Policy Framework.

HFRA strongly recommends that all Local Authorities consult with Hampshire Fire and Rescue Service on a voluntary basis whilst the Authority continue to influence, at Government level, the Fire and Rescue Service's proposal to be involved as statutory planning consultees.



Ministry of Housing,  
Communities &  
Local Government

To:

The Chief Executive  
Unitary, Metropolitan, District and  
London Borough Councils in England  
County and County Borough  
Councils in Wales  
The Town Clerk, City of London  
The Clerk, Council of the Isles of Scilly  
The Sub-Treasurer, Inner Temple  
The Under Treasurer, Middle Temple

The Head of Building Control  
Unitary Metropolitan, District and  
London Borough Councils in  
England  
County and County Borough  
Councils in Wales  
City of London  
Council of the Isles of Scilly

Approved Inspectors

cc: The Chief Executive:  
County Councils in England  
Combined Authorities  
National Park Authorities in England  
& Wales

The Chief Fire Officer: Fire and Rescue  
Authorities in England & Wales

15 February 2018

Dear Sir or Madam

**Dame Judith Hackitt's Interim Report of Building Regulations and Fire Safety,  
*Building A Safer Future***

Dame Judith Hackitt's Interim Report, *Building A Safer Future*, was published on 18 December 2017.

The Interim Report included several recommendations for Government and industry to act upon now to contribute to the provision of safer buildings. I am writing to draw your attention to the key recommendations that concern building control bodies and fire and rescue authorities.

**Scope of this Circular Letter**

The guidance in this Circular Letter applies to buildings and building work in England, and also to excepted energy buildings in Wales.<sup>1</sup>

<sup>1</sup> Excepted energy buildings are defined in the schedule to the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019)



## Documents

The full text of the Interim Report is available at:

<https://www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-interim-report>

Procedural guidance for consultation procedures between Building Control Bodies and Fire and Rescue Authorities, *Building Regulations and Fire Safety Procedural Guidance*, can be found at: <https://www.labc.co.uk/guidance/resource-library/technical-guide-building-regulations-fire-safety-procedural-guidance>

## Interim Recommendations for Building Control System

The recommendations relevant to the building control system, as expressed by Dame Judith in her Interim Report, are as follows:

- Consultation by **building control bodies** and by **those commissioning or designing buildings** should take place early in the process and fire and rescue service advice should be fully taken into account. The aim should be to secure their input and support at the earliest stage possible so that fire safety can be fully designed in.
- There is a need for **building control bodies** to do more to assure that fire safety information for a building is provided by the person carrying out the building work to the responsible person for the building in occupation. Given the importance of such information for on-going maintenance and fire risk assessment, proof should be sought that it has been transferred.
- **Building developers** need to ensure there is a formal review and handover process ahead of occupation of any part of a new high-rise residential building. While there are legitimate reasons to allow occupation in a phased way, the practice of allowing occupancy of buildings without proper review and handover presents barriers to the implementation of any remedial measures identified as part of the completion process.

Whilst responsibility for compliance with the requirements of the Building Regulations rests with the person carrying out the work, in light of Dame Judith's recommendations the Department is keen to support building control bodies in carrying out their statutory functions to consult with fire and rescue authorities and ensure a handover of fire safety information. These are essential requirements for delivering safe buildings within the current regulatory framework.

## Legal Requirements

Those carrying out building work, building control bodies and fire and rescue authorities variously have statutory duties under:

- The Building Act 1984;
- The Building Regulations 2010;
- The Building (Approved Inspectors etc.) Regulations 2010; and
- The Regulatory Reform (Fire Safety) Order 2005 (the "Fire Safety Order").

For building control bodies these include duties to consult fire and rescue authorities. Whilst the requirements for consultation differ for local authorities and approved inspectors, the intent is the same and should have the same effect in practice.

#### *Consultation with the Fire and Rescue Authority*

Consultation with fire and rescue authorities is required<sup>2</sup> on plans for the erection or extension of, structural alteration to, or relevant change of use of, buildings that are covered by the Fire Safety Order. The primary purpose of this consultation is to reduce the risk that additional fire safety measures might be required and/or enforcement action taken by the fire and rescue authority after completion of the building work on occupation or following a change of use.

Consultation with the fire and rescue authorities should take place as early as possible. In particular, local authorities would need the views of the fire and rescue authority before approving a full plans application under section 16 of the Building Act and approved inspectors before giving a plans certificate under section 50 of that Act.

Where fire and rescue authorities are consulted by building control bodies about plans the *Procedural Guidance* is clear that fire and rescue authorities should reply to local authority building control in writing and within agreed timescales (usually 15 working days)<sup>3</sup>. Local authority building control departments have a statutory requirement to approve or reject plans within two months. Approved inspectors may not give a plans certificate or final certificate until 15 days have elapsed from the date on which they consulted the fire and rescue authority<sup>4</sup>.

Observations made by the fire and rescue authority that are relevant to compliance with Building Regulations should be given full consideration by the building control body. In line with the recommendation in the Interim Report, observations that are not directly relevant to compliance with the Building Regulations but may help the responsible person comply with the provisions of the Fire Safety Order should nevertheless be considered and passed on to the designer / client for them to consider so that fire safety can be fully designed in.

Please note that the requirement to consult with fire and rescue authorities applies also where building owners carry out re-cladding work on tall buildings, as described in the Circular Letter of 13 July 2017 on the Re-cladding of Tall Buildings, which can be found at: <https://www.gov.uk/government/publications/circular-letter-on-recladding-of-tall-buildings>.

#### *Fire Safety Information*

Regulation 38 of the Building Regulations 2010 requires persons carrying out building work where the Fire Safety Order applies to give fire safety information to the 'responsible person'<sup>5</sup> no later than the date of completion of the work or occupation of the building, whichever occurs first. Article 4 of the Fire Safety Order sets out the types of information

<sup>2</sup> For local authorities, article 45 of the Fire Safety Order 2005; for approved inspectors, regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010

<sup>3</sup> *Building Regulations and Fire Safety Procedural Guidance*, paragraph 2.16

<sup>4</sup> Building (Approved Inspectors etc.) Regulations 2010, regulation 12(4)(b).

<sup>5</sup> Article 3 of the Regulatory Reform (Fire Safety) Order 2005.

to be included and further guidance on this is given in Appendix G of *Approved Document B, volume 2 – Buildings other than Dwellinghouses*

The fire safety information provided under Regulation 38 is intended to assist the responsible person to operate and maintain fire safety within occupied premises. The aim is to ensure that the information relating to the safety of the building is kept with the building, and can be shared with all who have duties (then or subsequently) for the ongoing safety and maintenance of the building. Those carrying out building work should bear in mind that the information should be given to all those who are known to have duties under the Fire Safety Order.

Building control bodies should not issue final or completion certificates for building work until they are sure that fire safety information (in respect of the design, construction, services, fitting and fittings etc) has been provided to the responsible person.

#### *Certification of compliance*

The Interim Report identifies the need for building developers to ensure that there is a formal review and handover process ahead of occupation of any part of a new high-rise residential building. Where a building is not occupied before completion of the building work, the normal process of giving a completion or final certificate will apply. These certificates indicate that the building control body is satisfied that the work complies with Part B of the Building Regulations and that the relevant fire safety information has been given to the responsible person.

When a building or part of a building is to be occupied before completion, building control bodies also have a role. Where the local authority is the building control body, the person carrying out the work must notify them of occupation five days before it occurs<sup>6</sup> and the local authority must give a completion certificate<sup>7</sup> indicating that it considers that Part B has been complied with and the relevant fire safety information has been given.

Where an approved inspector is the building control body and the building or part of it has been occupied before completion, the initial notice will lapse within four/eight weeks<sup>8</sup> if a final certificate or part final certificate in respect of the fire safety provisions has not been given.<sup>9</sup> Approved inspectors should therefore remind their clients to give early notice where it is intended that a building or part of a building is to be occupied before completion to ensure that relevant fire safety information has been given to the responsible person.

#### **Interim recommendations for Government**

The Government is also implementing the recommendations in Dame Judith's Interim Report that fall to it directly to deliver. Over coming months we intend to consult on making two sets of changes to Approved Document B. The first will be to revise the wording on assessments in lieu of testing, also known as desktop studies. We have

<sup>6</sup> Building Regulations 2010, Regulation 16(5).

<sup>7</sup> Regulation 17A of the Building Regulations 2010

<sup>8</sup> Regulation 17 of the Building (Approved Inspectors etc.) Regulations 2010

<sup>9</sup> Section 50 of the Building Act 1984 and Regulation 17(6) of the Building (Approved Inspectors etc.) Regulations 2010

started work with industry experts to draft the guidance and intend to publish a consultation in the spring

The second change will be to clarify the whole document so that it is easier to use. We have carried out a user study on how some of our Approved Documents – including Approved Document B - are used. We are working closely with industry experts and the Building Regulations Advisory Committee (BRAC) to use the insights from the research to produce a document that is more user-friendly. We intend to publish a clarified draft of Approved Document B for consultation.

We are also exploring, in line with Dame Judith's recommendation, our wider approach to guidance contained in Approved Documents and will be seeking views on how the guidance is used and how it can be improved in the future.

### **Enquiries**

Enquiries about this letter should be addressed to [enquiries.br@communities.gsi.gov.uk](mailto:enquiries.br@communities.gsi.gov.uk).

Yours faithfully



**Offer Stern-Weiner**

Deputy Director  
Building Regulations and Energy Performance Division  
Ministry of Housing, Communities and Local Government