



Report title

Fire Safety legislation - review of current legislation

Meeting

Strategy Committee

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Report by

Deputy Commissioner and Assistant Commissioner Fire Safety Regulation

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Summary

At its last meeting on 9 September 2013, the Committee agreed a report (FEP 2117) setting out a forward work programme. One of the topics agreed was "a focus on fire safety legislation and regulation, to include a review of current legislation, identifying any gaps, etc." This topic ties in with the work of the Lakanal House Working Group (LHWG) which submitted a memorandum to the Strategy Committee at the same meeting listing a number of fire safety legislation related issues.

This report is essentially an initial discussion paper which gives consideration to the scope of this review of fire safety legislation and seeks Members views on what issues should included in the review.

Recommendations

That:

1. Members provide feedback on whether they feel that enough background information has been provided in this report or whether there are gaps;
2. The Committee indicates which areas it wishes to examine in greater detail and agrees a prioritisation for these areas (paragraph 3 refers); and
3. A copy of this report and decisions taken upon it be sent the Lakanal House Working Group in order to update them on progress being made with regard to the memorandum from the Group sent to the Committee at its last meeting.

Introduction/Background

1. The Committee has decided that it wishes to undertake a review of the effectiveness of fire safety legislation. Officers do not see this as being only the Fire Safety (Regulatory Reform) Order 2005 (the RRO); the work will need to concern itself with legislation and regimes that are not under the control or direction of the fire service. There is arguably as much potentially effective fire safety legislation under the control and delivery responsibility of other local authorities (and others), as fire authorities. How well responsibilities are (a) understood and (b) exercised will need to be a feature of this work.
2. The Authority has formed a Member-led working group to consider the lessons to be learnt from the Lakanal House fire. In the course of its work so far it has identified some issues which it believes are relevant to this work of the Strategy Committee. Those issues are:
 - The regulation of leasehold properties within high rise buildings (how landlords are dealing with leaseholders making modifications to doors/interior walls, etc. which potentially compromise the fire safety of buildings);
 - The need for a recognised Government standard for 'competent persons' carrying out fire safety preventative measures; and
 - Looking at how the Brigade prioritises its inspections of residential high-rise buildings.
3. It is not intended that this first report should cover all of the relevant detail (which is extensive), but it instead sets out the general background and principles underpinning fire safety legislation, including who has responsibilities for fire safety so that the Committee is able to decide how it wishes to organise and approach the task. Questions might provide a good way to approach the task and, initially, these could include:
 - What are the fundamental principles of "regulatory fire safety"?
 - What is the legal framework and other policy instruments?
 - Who has responsibilities?
 - Are responsibilities and roles clear, understood and discharged in practice?
 - Is a single regime for different classes of premises sensible?
 - Do the necessary tools and competencies for the task exist (which would include the LHWG reference concerning competent persons)?
 - Who is responsible for the overall effectiveness of the legislative regime?
 - How are the relevant bodies performing (which would include the LHWG reference concerned with the prioritisation of inspection)?
 - What are the problems (which would include the LHWG reference concerned with the control of leasehold properties)?

What are the fundamental principles of regulatory fire safety?

4. One of the Authority's principal aims is Protection, which in the fire service means influencing and regulating the built environment to protect people, property and the environment from harm. This aim is primarily achieved through the enforcement of fire safety legislation. Enforcement work is principally about ensuring that buildings comply with fire safety legislation, but also

involves educating people responsible for those buildings about their responsibilities under the law.

5. Traditionally, there have been three strands to fire safety legislation in this country:

Structural Integrity: governed by Building Acts and Regulations, which date back to 1774 in their earliest form. These were originally a matter of local discretion – local authorities could choose to adopt a regulatory scheme if they wished. A series of London Building Acts in the 1930s established a building regulations scheme across London. To avoid the difficulties of varying local requirements nationwide regulations were adopted in 1965 and in 2012 most of the remaining varying local regimes were finally repealed. The Building Act 1984 and the Building Regulations 2010 (as amended) are the current pieces of legislation in this area. Approved Document B, a supporting publication to the Building Regulations provides detailed technical guidance on fire safety matters. The legislation seeks to ensure that buildings are constructed so as to resist the spread of fire and allow any persons present to escape. It applies to all types of premises, including private dwellings. Local building control authorities enforce this legislation.

Managing Occupied Buildings: this area of legislation is concerned with the on-going management of occupied buildings, ensuring that fire is detected at an early stage so that occupants can be given warning and can leave the premises by previously designated and well signed escape routes. It is also concerned with training those who use the premises regularly in the action to be taken in the event of fire to ensure both their own safety and that of visitors unfamiliar with the premises.

Managing Work Activities: this covers the control of hazardous work activities, in order to minimise the potential for fires to start or reduce the spread of fire to permit those affected to reach a place of safety. These so-called "process fire precautions" are controlled under the Health and Safety at Work etc Act 1974 and are the responsibility of the Health and Safety Executive. They are not covered in this report.

What is the current legal framework and other policy instruments?

6. The regulatory framework outlined above has been largely successful in minimising the risk from fire in public buildings and larger workplaces, as reflected in a steady and lasting decline in the numbers of fatalities and injuries associated with fires in these types of buildings¹. Until the introduction of the RRO in October 2006, the mainstay of fire safety legislation for many years was the fire certificate, but this did also give rise to a number of constraints upon the ability of fire authorities to deploy their resources to maximum effect. In particular, the onus rested with the fire authority to provide fire safety solutions but with the occupier to complete any necessary works. In practice the fire authority normally also had to ensure that the works were completed. The process was labour intensive for fire authorities.
7. The framework was also confusing. To take a worst case example a hotel with restaurant(s) and bar(s) and a dance/disco area all selling alcohol required a fire certificate from the fire authority, a licence to sell alcohol from the licensing magistrates and a music and entertainment licence from the local authority. All three documents contained fire safety requirements with which the applicant must comply. Similarly, following the introduction of extensive new regulations for workplace fire safety in the Fire Precautions (Workplace) Regulations 1997 two identical

¹ In 2005/6 there were 1,378 incidents in public buildings and larger workplaces and this had reduced to 917 in 2012/13. There have been 6 fatalities and 415 injuries during that period. Injuries have reduced from 71 in 2005/6 to 29 in 2012/13.

workplaces with identical businesses could be subject to different regulatory obligations depending on whether workers were *employed* or *self-employed* – a distinction that appeared arbitrary in terms of fire safety.

8. In response to complaints about fire authorities' supposed heavy-handed approach to enforcement successive governments initiated reviews of fire safety legislation between the late 1980s to the mid 1990s. All found the complaints to be unfounded and based upon anecdotal evidence at best, but those reviews also recognised the need for change to a fire safety regime reflecting fire risks in individual premises. Similar conclusions had been reached in other places, namely the European Commission and the Audit Commission.
9. By 2000 (when LFEPA was established) a multiplicity of Acts, Orders and Regulations (some 120) governed fire safety in occupied premises, This legislation included, for example, the Licensing Act 1964, Theatres Act 1968, Gaming Act 1968 and the Cinemas Act 1985. The legislative morass was widely recognised as a problem and contributed to the reform introduced in 2005 which was intended to ensure a single national framework for fire safety regulation (FSR), based on concepts that were well established through the Health & Safety at Work Act 1974 and other regulatory regimes. However, some localised and industry specific variations still survive and ambiguities around the relationship of the RRO to other regulatory regimes have not been fully resolved, most notably over housing. Appendix A details the current regulatory fire safety legislation which is summarised below².

The Regulatory Reform (Fire Safety) Order 2005

10. The RRO was introduced in October 2006 and relates to fire safety in non-domestic premises and to the common parts of residential premises (including blocks of flats and houses in multiple occupation). It replaced fire certification under the Fire Precautions Act 1971 with a general duty on the "responsible person" for the premises to undertake a risk assessment and to eliminate or reduce the risk from fire as far as is reasonably practical and provide general fire precautions to deal with any risk. The risk assessment must only be recorded if there is a total of five or more employees. The responsible person for the premises is also required, amongst other things, to:
 - Consider who may be especially at risk;
 - Take additional measures to ensure fire safety where flammable or explosive materials are used or stored;
 - Create a plan to deal with any emergency and where necessary record any findings;
 - Maintain general fire precautions, and facilities provided for use by firefighters; and
 - Keep any findings of the risk assessment under review.
11. The RRO represented a major change of approach in enforcement. The Fire Precautions Act 1971 (as amended) embodied a very prescriptive approach under which the fire authority inspected all eligible premises and advised them what was required to enable a fire certificate to be granted. It covered far fewer premises - about 24,000 offices, shops, factories, hotel and railway premises.
12. The RRO by contrast covers many more premises (an estimated 600,000 in London) and shifts the onus onto the responsible person to comply with the legislation. The fire authority's role is to

² An informative report (FEP 2083) setting out the Brigade's fire safety regulation enforcement and other activities was submitted to Strategy Committee at its meeting on 16 July 2013

achieve compliance with the RRO through education, providing advice and by appropriate formal enforcement action where non-compliance is found. The fire authority has much more flexibility to use its resources where it feels the risk warrants inspection, using a range of data and information sources to inform decisions and actions.

13. The RRO also separated the fire safety regulatory regime from the premises licensing regime operating under the Licensing Act 2003 and similar legislation. Fire safety conditions in premises licenses would be ineffective if they related to a matter that could be regulated under the RRO. For example a licence condition as to maximum numbers on the premises, intended to secure safe escape is possible in the event of fire, could not now be imposed. However, fire and rescue authorities remain statutory consultees on licence applications and are able to apply for the review of a premises licence. It is not at all clear how these powers should now be exercised (if at all).
14. The original ethos of the RRO was to improve fire safety through prevention and publicity. Officers feel that this is a key area of performance where fire safety regulation could change the way in which it delivers its enforcement role by focussing on increased publicity to businesses and greater engagement in sector led prevention. The Primary Authority Scheme offers a good opportunity to energise this approach and lessons could be learnt from the success of community safety engagement strategies such as 'After the fire leaflets', 'hot strike' and significant marketing campaigns such as 'Fire Kills' to publicise regulatory fire safety in the same way, but directly to the business and commercial sector.

The Fire Precautions (Sub Surface Railway Stations) Regulations 2009

15. These Regulations were first introduced in 1989 and originated from the King's Cross underground station fire in 1987 and are similar to the RRO but relate specifically to sub surface railway stations in London. Due to their specialist nature, a small team of inspecting officers based at Brigade Headquarters is responsible for their enforcement but using the same risk based approach employed in the enforcement of the RRO (which also applies to sub surface railway premises). The Sub Surface Railway Stations Regulations were amended at the time the RRO was introduced because of concerns that fire safety on the sub surface railway system was not adequately covered by the RRO. Fire safety in sub-surface railway stations is therefore now governed by two pieces of legislation – the 2009 Regulations and the RRO. Experience has shown that the 2009 Regulations have fulfilled their intended purpose of closing the potential gap between the fire safety cover provided by the Sub Surface Railway Stations Regulations and that provided by the RRO.

Petroleum (Consolidation) Act 1928/ The Dangerous Substances and Explosive Atmospheres Regulations

16. The Authority is responsible under the above Act for administering the granting, renewal and transfer of petroleum licences for retail petrol filling stations. Due to the specialised nature of the work, a small team of inspecting officers based at Brigade Headquarters is responsible for their enforcement but using the same risk based approach used in the RRO. Some parts of filling stations (e.g. the kiosk/shop) are governed by the RRO.
17. The main obligations for licensees are now in the Dangerous Substances and Explosive Atmospheres Regulations insofar as they relate to petrol filling stations resulting in licences under Petroleum (Consolidation) Act 1928 containing limited explicit duties. Petroleum legislation is changing and the Health & Safety Executive is considering a proposal that petroleum specific legislation should be repealed and replaced with a new 'simplified' set of regulations.

Housing Acts

18. The principal means of regulation and control for residential property, including high rise blocks, are the Housing Acts 1985 and 2004. These Acts make housing authorities specifically responsible for keeping the condition of all housing in their area, including their own housing stock, under review and for checking all aspects of health and safety, including fire safety. The legal duty on local housing authorities applies in respect of the whole building including the private living accommodation (i.e. the individual flats). The assessment of premises is by means of a housing health and safety rating system assessment, made by the local authority. Guidance to local authorities from central government is that these checks should be undertaken as part of the local authority's ongoing review of housing conditions in their area.
19. The latest estimate, based on Valuation Office data, was that there are around 334,000 premises in London where both the Housing Acts and the RRO apply. The RRO applies to the common parts of residential premises, i.e. the stairways and hallways. There remains a fundamental gap however in the interpretation of what are 'common parts' specifically - how far the common parts extend into the individual private compartments or flats such as front doors and walls. Guidance has been produced in an effort to close this gap, but inconsistencies in interpretation remain, which hinders the delivery of enforcement in these premises.

Who has responsibilities?

20. As Members will have seen from the description above, fire safety responsibilities are spread widely.
21. Fire authorities are responsible for achieving compliance through education, providing advice and by appropriate formal enforcement action where non-compliance is found. Fire authorities are not responsible however for fire safety within individual domestic premises.
22. Local authorities are responsible for keeping the condition of all housing in their area, including their own housing stock, under review and for checking all aspects of health and safety, including fire safety.
23. The RRO created a new class of "responsible persons" (RP). They are the people "in control" rather than just owners. That is not a straight-forward concept in practice and it has, on occasions, given rise to problems identifying the 'responsible person' when the Brigade is intent upon enforcement action. For example, for whole classes of premises, notably arms length housing or schools, different authorities take different approaches to whether or not they accept responsibility.
24. Responsible persons are required to carry out detailed fire risk assessment identifying the risks and hazards in the premises. The risk assessment must be recorded if they have a total of five or more employees. The responsible person for the premises is also required to:
 - Consider who may be especially at risk.
 - Eliminate or reduce the risk from fire as far as is reasonably practical and provide general fire precautions to deal with any risk.
 - Take additional measures to ensure fire safety where flammable or explosive materials are used or stored.
 - Create a plan to deal with any emergency and where necessary record any findings.
 - Maintain general fire precautions, and facilities provided for use by firefighters.
 - Keep any findings of the risk assessment under review.

25. Beyond schools and arms length housing organisations, there can be other complicated cases. For example, where a tenant can be a "responsible person" in so far as her/his lease has repair/maintenance covenants i.e. because it would then be the tenant who is "in control" of the things in the premises that need to be put right (e.g. alarm systems or fire doors). The owner will still have those RP duties that require greater control of the premises than the lease allows (typically if compliance requires structural changes like putting in a second staircase or carrying out works to common parts outside the leased parts of the building). There is a catch-all provision (in Article 5(3) of the Order) that the duty as the RP is shared by anyone else who is in any way "in control" of the premises. So a landlord would still be caught if s/he can be shown to be still in actual control despite there being paperwork showing s/he has passed on the responsibility to a tenant.
26. Building control authorities have a statutory responsibility to consult the fire authority where appropriate and applications are increasing along with the complexity of some of the proposals and engineering options. Officers are concerned that the Brigade is increasingly being used as a consultant and have some concerns, based on specific incidents, that some buildings have not gone through a thorough checking process to ensure they are built as per specification; and a spate of recent fires has identified 'workmanship' as a contributory factor to the outcome of the fire. This then becomes difficult for the client when the Brigade inspects under RRO and appear to be asking for additional measures when this should be identified during the building phase specifically the level and standard of workmanship.
27. In one such case, following a significant fire, the Authority successfully prosecuted the construction company who built the residential block concerned. A case against the Building Control Body (the NHBC) failed on a technicality. However, progressing the case resulted in acknowledgment from DCLG of the need for the fire safety aspects of the Building Regulations to be highlighted to builders and building control bodies as the view was taken that the requirements had slipped down the agenda when compared to matters such as disabled access and thermal insulation. As a result the Authority worked with LABC and the ACAI to highlight the issue and worked with the NHBC to deliver seminars to those working in the building trade (and in building control bodies) about fire safety matters including commonly found defects. Those seminars were rolled out across England and Wales with other Fire and Rescue Services participating in their own areas.

Are responsibilities and roles clear, understood and discharged in practice?

28. In general terms, there must be some doubt that the answer to these questions is yes and the ability of the Brigade to comment on how well others are doing their job is constrained by the absence of the necessary tools, information and locus. As set out above, the legislative framework remains overlapping and complicated; some of it no doubt necessarily so (buildings like The Shard are not the product of simplicity), but with worrying potential implications. It would not be against the grain of experience to conclude that these factors mitigate against success.
29. The Brigade clearly has a key role in assisting others to discharge their responsibilities in respect of the RRO - although it is not omnipotent (that is a statement worth making, in light of the number of times it is asked what we are going to do about a given problem). The Brigade does this through targeting its activities so that regulatory effort is directed primarily towards those whose activities give rise to higher levels of risk to public safety; where the hazards and risks are least well controlled; or against deliberate offences.

30. The Brigade also aims to make sure, through this targeting, that the direction of regulatory effort takes into account the level of risk. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it. The Brigade has systems for prioritising regulatory effort. These include a risk-based re-inspection programme and localised plans to identify high risk premises. Risk assessment, together with local data, intelligence and knowledge, underpins the Authority's approach to regulatory activity.

31. Enforcement action taken by the Brigade also provides some insight into the question. In the performance year of 2012/13, enforcement action was taken in respect of the following contraventions of Articles within the RRO (more than one action may be taken on the same premises):

| | |
|--|-------|
| • Duty to take general fire precautions | 2,744 |
| • Inadequate risk assessment | 5,416 |
| • Principles of prevention to be applied | 1,492 |
| • Fire safety arrangements | 3,499 |
| • Fire-fighting and detection | 2,195 |
| • Emergency routes and exits | 4,409 |
| • Maintenance | 3,775 |
| • Staff training | 2,247 |

32. In this context, the term "enforcement" has a wide meaning and applies to all dealings between the Authority and those on whom the law places a duty. The purpose of enforcement is to:

- Promote and achieve sustained compliance with the law;
- Ensure that the person responsible for premises takes action to deal immediately with serious risks to the safety of relevant persons; and
- Ensure that those individuals, businesses and other undertakings that breach fire safety requirements are held to account, which may include bringing alleged offenders before the courts.

33. The Brigade has a wide range of interventions at its disposal to secure compliance with the law and to ensure a proportionate response to criminal offences and the Authority has agreed an Enforcement Policy Statement³. Whilst officers believe there are appropriate powers under the RRO to enforce fire safety, the sanctions currently available to the Courts when considering awards for persons who have breached fire safety law may be seen as in need of reconsideration, (as has already happened in respect of Health and Safety offences, where the Government concluded that the general level of penalties handed down by the courts for health and safety offences were too low and did not deter people intent on flouting health and safety law).

34. Officers may offer businesses, other undertakings and individuals information and advice either in person, in writing, or over the telephone. This may include a warning that, in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may serve an enforcement/improvement notice; prohibit or restrict the use of premises in cases where the risk to the relevant persons is so serious; or they may prosecute or give a simple caution.

35. Regulatory notices specify the problem and will either require a remedy as determined by officers or (if the legislation allows) may allow for other action with an equivalent remedial effect. In most

³ FEP 1225, Authority, 24 July 2008

cases there is a right of appeal against a notice. Where a notice requires changes to a premises in which another enforcing body has a statutory interest, the Authority will, so far as is reasonably practicable, consult with such bodies as can reasonably be identified before serving the notice.

36. The Brigade uses discretion in deciding whether to bring a prosecution. Fair and effective prosecution forms a legitimate element of the Authority's strategy to reduce the risk of death and injury in the workplace by enforcing fire safety law. Any prosecution has serious implications for all involved – including the person prosecuted, casualties, witnesses and Brigade personnel.

Is a single regime for different classes of premises sensible (and does the regime sufficiently take account of multiple building uses and ownerships)?

37. A year after the introduction of the RRO, DCLG carried out a post-legislative review. In retrospect, it was probably too soon to get a good enough assessment of whether it was all working as intended (which the evaluation itself recognised). London was not part of the study and this must also matter given the extent of our responsibilities and the complex environment in which the Brigade undertakes them.
38. There are 17 categories⁴ of premises covered by the RRO (and beneath these categories 171 different sub-categories). They range from the smallest shop or office to huge and complex hospitals and warehouses. The RRO regime applies to them all, but clearly the challenge of applying the requirements of the RRO are context dependent; that raises many issues, including the question of the competency of available assessors to undertake fire risk assessments. The Fire Risk Assessment Competency Council, which sits under the Fire Sector Federation, was set up to define the competencies required for a fire risk assessor. This work was completed in 2011. Earlier this year, the Federation also produced a document to assist responsible persons in how to select a fire risk assessor and a list of schemes where assessors have met a level of competence.

Do the necessary tools and competencies for the task exist?

39. The Lakanal House experience provides some insight into the kinds of failure that can occur, illustrating some tasks not undertaken and others undertaken without sufficient regard to relevant fire safety considerations. However, although it is difficult to quantify, it seems highly likely to be the case that many London Local Authorities and other public bodies have since sharpened their focus (and increased their investment) in respect of their fire safety management responsibilities. The newly established High Rise Forum has demonstrated a great deal of enthusiasm for better competence and better action.
40. In the case of the Brigade itself, access to information is an issue. The RRO created legal responsibilities in relation to a number of premises and there is no definitive source of how many there are, what they are or where they are.
41. Like much of the Brigade's work, fire safety regulation activity is addressed based; inspections and audits are carried out against specific premises. In this context, the term "premises" refers to occupiers within "locations" (or buildings). A location may be multi-occupied (and the different premises within it could be inspected at different frequencies depending on the risk). That being so, it is obviously important to have an accurate database of locations/premises to help govern and direct this work so that resources are targeted at risk.

⁴ "Categories" are defined as Fire Service Emergency Cover (FSEC) codes. The sub categories are Valuation Office (VO) codes

42. When the RRO was implemented, reports at that time estimated there to be some 700,000 premises covered by the legislation. That was in contrast to the approximately 300,000 premises covered by the Fire Precautions (Workplace) Regulations. This figure of 700,000 compares with the figures for premises recorded on the Farynor database: location – some 320,000.
43. Since then there have been data sets that have caused the revision of the 700,000 estimate to reduce to about 600,000, but even so, there remains a wide disparity between the estimated number of premises and those recorded on Farynor. Officers are therefore considering ways in which the Farynor database could be populated with data imported from new external sources, so that the Brigade at least has a knowledge of all the premises for which it has an enforcement responsibility.

Who is responsible for the effectiveness of the legislative regime?

44. Ultimately it could be argued that Government is responsible for the effectiveness of the legislative regime since only it has the power to effect changes in legislation. Each enforcing authority must of course seek to ensure that it discharges its statutory responsibilities in an efficient and cost effective manner. In addition, there are co-ordinating bodies like LACORS, London Councils, CFA and the Mayor who in some ways seek to ensure that different authorities work together towards the common goal of ensuring public safety.

How are the relevant bodies performing?

45. The Brigade regularly publishes performance data about its fire safety regulatory activity (and the suite of data has been expanded in this performance year), but desktop research has not found any examples of other bodies who produce performance reports on their fire safety management performance.
46. In the case of the Brigade, a lot of data is publicly available, including an on-line register of statutory notices issued. The Brigade also seeks to benchmark its performance against Metropolitan Brigades (although it could be argued that accurate comparisons are not truly possible due to some of the unique characteristics of London as a capital city.) Officers are always keen to share best practice and to learn from the experience of other brigades and authorities and have well established networks to facilitate this process.

Current Brigade Activities and Achievements

47. Having buildings designed and built to meet fire safety standards is a key contributor to a safer London. The Brigade is a centre of excellence for fire safety engineering and it wants to continue to develop this expertise and the influence we have on making sure major engineered solution building projects are designed to be safe from fire. The Brigade has also made a significant contribution to make on influencing building regulations and the future of the built environment, including major developments like the Thames Gateway and the legacy of the 2012 Olympics. Influencing the built environment involves the Brigade working in partnership at a national, regional and local level with the Government, regulatory authorities, and owner/occupiers of buildings. The Brigade continues to lobby Government to strengthen the current building regulations in respect of fire safety, such as the need for greater regulation of timber framed buildings during their construction phase, and in the development and use of new building materials and techniques.
48. The Brigade also seeks to increase its role in influencing London Boroughs in terms of fire safety and understanding how growth may affect our prevention, protection and response resources

throughout London. The Brigade continues to lobby for legislation on sprinklers,⁵ further develop our role in planning safer buildings in London and seek to improve standards in fire safety engineering. Working with partners and other bodies is an important part of this. The Brigade uses every opportunity possible to put its views across; both at a corporate level by responding to consultations by government and locally through our network of borough commanders and FSR managers with their local authority partners and through Brigade representation at BSI committees, London Councils, LACORS and CFOA. The Brigade continues to be actively involved in partnership working to improve fire safety throughout the sector and have several successful partnerships including:

- *NHS Concordat* which is a partnership with NHS London that deals with the complex issues of Hospital fire safety;
- *Memorandum of Understanding with the Care Quality Commission (CQC)* which sets out communication between CQC and the Brigade when an applicant applies to register a care home;
- *A Housing Protocol* to help deal with enforcement overlap between Housing and RRO;
- *A protocol with London Licensing Authorities* to deal with public safety at premises that require a license under the Licensing Act; and
- *Primary authority partnerships* for petroleum licensing (which from next year will be extended to cover the RRO – as detailed in a separate report on this agenda).

Conclusions and future work programme

49. This report set out to provide members with a first pass at some of the issues which officers anticipate the Committee may wish to discuss. Officers would welcome feedback from Members on whether they feel that enough background information has been provided, or whether there are gaps. It is anticipated that the Committee will then wish to examine some of the areas in greater detail and agreement as to a prioritisation would be valuable.

50. Also appearing on the agenda for the meeting of the Committee is a draft Public Affairs Strategy. That paper reflects the analysis in this report, that there are problems with the current regulatory regime, which may well need changing. It notes that this would not be an easy objective to achieve, would likely take some years (possibly four), and any campaign to achieve it would need to be based on some detailed legal and policy work to develop a model for a revised RRO that we would consider satisfactory. It would also need to consider the interaction of the RRO with other relevant legislation including Approved Document B and other building regulations, and the Housing Acts 1985 and 2004.

Head of Legal and Democratic Services comments

51. . The statutory context for regulatory fire safety is discussed throughout the report and a comprehensive statement of current statutory provisions is included in the Appendix.

⁵ The building regulations have some requirement for sprinklers in certain building types. Officers recommend that this should be extended to include more building types specifically where vulnerable people are likely to occupy such as schools, care homes and high rise residential premises.

Director of Finance and Contractual Services comments

52. The Director of Finance and Contractual Services has reviewed this report and has no comments.

Sustainable Development Implications

53. There are no sustainability implications arising from this report.

Equalities Implications

54. The Brigade seeks to be fair and proportionate in all its fire safety regulation activities and has published an Enforcement Policy Statement which aims to ensure that its enforcement activity is transparent and delivered fairly. The Brigade monitors all enforcement action to ensure that this is the case and strives to ensure that advice and guidance is available to all parts of the community.

List of Appendices to this report:

Appendix A: Current Regulatory Fire Safety Legislation

| | |
|---|--|
| LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 | |
| List of background documents FEP 2083 – Fire Safety Regulation Enforcement and Other Activities FEP 2117 – Strategy Committee – Future Work Programme FEP 1770 – Revised Fire Safety Regulation Strategy 2011-14 FEP 1225 – Revised Enforcement Policy Statement | |
| Proper officer | Deputy Commissioner |
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Appendix A: Current Regulatory Fire Safety Legislation

A. Fire Safety Legislation enforced by LFEPA:

1. Regulatory Reform (Fire Safety) Order 2005 (the "RRO")

The standard fire safety regulations. They cover all premises other than "domestic premises" (and also excluding various offshore installations, outside agricultural sites, vehicles subject to excise duty and mine works underground).

2. Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009

Specific regulations covering public transport railway stations that have a platform wholly or partly enclosed in a tunnel.

3. Petroleum etc

a. Petroleum (Consolidation) Act 1928

A scheme for licensing petrol filling stations.

b. Dangerous Substances & Explosive Atmospheres Regulations 2002

Regulates safe handling of explosive and similarly highly flammable materials in a workplace. LFEPA is the enforcement authority for the DSEAR 2002 only in as far as they relate to retail vehicle fuel filling stations and to non-retail workplace petrol filling stations. For other workplaces these regulations are enforced by the HSE.

c. Petroleum-spirit (Motor Vehicles etc) Regulations 1929

Regulates the keeping and use of petroleum not for sale i.e. private storage of petrol not in workplaces.

d. Petroleum Spirit (Plastic Containers) Regulations 1982

Regulations concerning containers used for storage of petrol not for sale i.e. private storage of petrol not in workplaces.

e. Public Health Act 1961, PART VI

Regulates safety of disused petroleum storage tanks (essentially sites of closed petrol filling stations).

4. Construction (Design and Management) Regulations 2007

Fire Authorities enforce these regulations as they relate to emergency procedures, emergency routes and fire safety on construction sites that form part of an occupied building. HSE/Local Authorities enforce these regulations on other construction sites.

5. Health & Safety (Safety Signs and Signals) Regulations 1996

Enforcement of fire safety signage e.g. means of escape, location of fire extinguishers etc. This is now essentially subsumed within the RRO.

6. Local legislation

Over the years local authorities have sponsored legislation to create regulatory regimes specific to their area and supplemental to national regulations. Most were repealed with the RRO, but some remain in force:

a. London County Council (General Powers) Act 1912

Registration of petroleum oil depots and (with Secretary of State's consent) to make regulations for the "diminishing or preventing the risk of the outflow of petroleum oil" from them. (This covers inner London only.)

b. Greater London Council (General Powers) Acts 1968 and 1978

Formation of large stacks of various flammable materials needs prior consent of LFEPA.

B. Other regulatory regimes where LFEPA must be consulted

1. Building Act 1984/Building Regulations 2010

A local authority which receives full plans for building regulations approval at premises covered by the RRO must consult the fire authority (this duty is in Art45 of the RRO). There are similar duties for a non-local authority "approved inspector" who wishes to approve plans (Art46 of the RRO).

2. Housing Act 2004

The Housing Health & Safety Rating scheme operated by local housing authorities in respect of housing of all tenures. This includes assessment of fire safety. Housing authorities must consult fire authorities before taking enforcement action in relation to a fire hazard they have identified in a House in Multiple Occupation or the common parts of flats. (The RRO applies to these premises, and may be a more appropriate regulatory tool).

3. Licensing and similar

NB. Art43 of the RRO is a general provision rendering ineffectual licence conditions that could be covered by enforcement of the RRO. (Items (c) to (e) below also reflect this in amendments to the primary legislation.) Therefore licensing local authorities are now unlikely to include substantive fire safety measures in their licenses.

a. Licensing Act 2003

Fire authorities are a statutory consultee on local authority licensing policies and may make representations on applications for new licenses etc. Particular provision is made for the fire authority to recommend a maximum permitted capacity in certain limited cases.

b. Gambling Act 2005

Similarly fire authorities are consulted on applications concerning Gambling Act premises licences, but licence terms should not cover matters dealt with through the RRO.

- c. **Safety of Sports Grounds Act 1975 (as amended by Fire Safety & Safety of Places of Sports Act 1987)**
Borough councils regulate sports grounds with a capacity of over 10,000 through the issue of safety certificates. Fire authorities are a statutory consultee on applications for certificates.
- d. **Caravan Sites & Control of Development Act 1960**
Local authorities licence caravan sites and must consult fire authorities as to fire precautions to be included in the licences.
- e. **Marriages and Civil Partnerships (Approved Premises) Regulations 2005**
Local authorities licence places approved for marriage/civil partnership ceremonies. They are to consult Fire Authorities before granting a licence (but the RRO Art43 provisions apply).

4. Bylaws

NB. Art44 of the RRO is a general provision rendering ineffectual bylaws relating to matters that could be enforced under the RRO. Therefore these powers, while still current, are effectively redundant.

- a. **Public Health Act 1961 – pleasure fairs and roller skating**
Local authorities may introduce bylaws to regulate public safety at pleasure fairs/roller skating rinks. The fire authority is to be consulted before any are made.
- b. **Food Act 1984 bylaws**
Local authorities may make bylaws for preventing the spread of fire at food markets, after consultation with the fire authority.

5. Local legislation where consultation with LFEPA is required

- a. **London Building Acts 1930-39**
This is a local building standards scheme for London going beyond requirements under the national scheme of building regulations. These and many similar local schemes elsewhere in England were largely repealed in late 2012. A provision remains for borough councils to enforce standards for fire-escapes in multi-storey pre-war buildings once they have consulted LFEPA, but it is essentially redundant after the RRO.
- b. **London Government Act 1963, Greater London Council (General Powers) Acts 1966-1984, and London Local Authorities Act 1991**
Theatres, cinemas, boxing, wrestling, exhibition places, tattoo parlours etc were not included in the Fire Precautions Act 1971 regime requiring certification as they were not regarded as "shops". They were covered by specific regulatory legislation which included standards for fire safety. This was then enforced through local authority licensing (generally with assistance from fire authorities). Some of these regulations were in local Acts specifically for London.

Again these are essentially redundant as the RRO now includes all these premises within the standard fire safety regime and Art43 excludes fire safety from being addressed through licence conditions.

C. Regulation involving fire safety without LFEPa involvement

Historically numerous pieces of legislation provided for duties to have regard to fire safety for certain premises or activities outside the standard regulatory regime. The near universal application of the RRO has largely rendered these redundant. Some might still be worth mentioning:

1. **Animals:**

These are local authority licensing regimes that provide specifically for fire safety for animals to be addressed (something not directly addressed in the RRO):

- a. **Pet Animals Act 1951** (Licensing of pet shops)
- b. **Animal Boarding Establishments 1963**
- c. **Riding Establishments Act 1964**
- d. **Breeding of Dogs Act 1973**
- e. **Dangerous Wild Animals Act 1967**
- f. **Zoo Licensing Act 1981** There is no duty to consult fire authorities, but there is a duty for local authority to have regard to any representations made by the relevant fire authority.

2. **Children and vulnerable adults**

Various social care regulations enforced by the Care Quality Commission provide obligations to maintain safe premises. There is potential for argument as to whether many care settings are a "workplace" (so covered by the RRO) or "domestic premises" as the service user's home (so not covered by the RRO).

- a. **Children's Homes Regulations 2001** Areas to which children have access to be so far as reasonably practicable free from hazards to their health or safety.
- b. **Residential Family Centres Regulations 2002** (as amended) – where the RRO does not apply (presumably because the premises are a "domestic premises") there is a duty on the provider to consult the fire authority on fire safety measures (but no enforcement role for the fire authority).
- c. **Health and Social Care Act 2008 (Regulated Activities) Regulations 2010** – are the general regulations for registered social care providers. Providers must "have procedures in place for dealing with emergencies which are reasonably expected to arise from time to time" and ensure service users are "protected against the risks associated with unsafe or unsuitable premises" (although the service user's home is not included as "premises" for this regulation).

3. **Education Act 1996 etc** Fire safety is addressed in regulations on health and safety in schools maintained by local authorities (although schools will also be covered by the RRO).