



Fire Safety – Key legislation

Introduction

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Context

When a block of flats is designed and constructed, Building Regulations make certain requirements in regards to fire safety measures. Unfortunately, there is no ongoing control for the maintenance of these measures under Building Regulations. Hence, the regulations have no effect until there are proposals for alterations. After the block is occupied, control of fire safety is transferred to the Housing Act 2004 and the Regulatory Reform (Fire Safety Order) 2015.

Legislation

Building Regulations

Building Regulations cover various aspects of fire safety measures, including means of escape, structural fire precautions, smoke control and facilities for the fire and rescue service. The regulations apply to new building work, such as erection of new block of flats, extension of an existing block and material alternations.

Inappropriate and unauthorised alterations can undermine the measures provided to ensure residents safety therefore they must be approved by a building control body. Any proposals to carry out alterations to fire alarm systems, means of escape, smoke control arrangements or alterations to facilities for the fire and rescue service should be submitted for approval.

Residents should be aware of their responsibilities to maintain the fire precautions originally set out by the Building Regulations at the time their flat was constructed. Minor alterations and building works can often result in contravention of the Building Regulations, which is in fact an offence under the Building Act 1984.

For instance, removal of cross-corridor fire doors, or replacement of a fire door by a non-fire-resisting door, would be such a contravention. It is important to note there is currently no requirement under the Building Regulations for upgrading existing fire safety measures to current standards, but existing non-compliances with regulation must not be made any worse in the course of building works

Housing Act

The Housing Act 2004 sets out requirements regarding the condition of a broad spectrum of housing, including both individual flats within a block and the common parts of that block. Local housing authorities are the enforcing authority for this legislation.

The Housing Health and Safety Rating System (HHSRS) carries out assessments of the conditions within flats along with the common parts of blocks of flats. In order to identify hazards and allow a judgement to be made as to whether the consequent risk to residents is acceptable. The assessment is carried out on each individual flat, rather than the entire block as a single building.

Assessed hazards are classified under the Act as either Category 1 or 2, according to the extent of risk to the most vulnerable occupants. Category 1 hazards are deemed a greater risk than Category 2 hazards. If a local housing authority becomes aware that a Category 1 or Category 2 hazard may exist, they are obliged to carry out an inspection.

Regulatory Reform Order

The Regulatory Reform or Fire Safety Order 2005 (FSO) does not apply to individual flats, but instead just to the common parts of blocks of flats. It imposes requirements and duties on the 'responsible person'. In the case of a block of flats, the responsible person is the person having control of the premises. Typically, the responsible person is the freeholder or landlord, but may be a residential management or right to manage company. However, responsibilities and duties imposed on the responsible person also apply to any other person that has control of the premises. This includes anyone under a tenancy or contract who has a responsibility for maintenance or repair of anything in or on the premises or the premises itself.

Conclusion - TBC

As you can see there is overlap between the Housing Act and the FSO. The Housing Act applies to the common parts and the flats themselves, while the common parts of blocks of flats also fall within the scope of the FSO. A further complexity is that the safety of the common parts can sometimes depend on fire safety measures within the flats, for which there is no power to make requirements under the FSO. There is, however, such a power under the Housing Act.

In addition to this, there is often confusion around what is meant by the term 'fire risk assessment' and its scope. Whilst it is required by legislation and its purpose is to evaluate the risk to people from fire, landlords and other responsible persons are frequently uncertain as to the extent to which existing fire safety measures – particularly those relating to the structure of the building – need to be investigated.

As the legislation around fire safety measures can be difficult to interpret, it is vital the right questions are asked and any potentially contentious matters, resolved from the outset.

For more information and advice on factors to consider around fire, water and asbestos, please contact Yashmin Mistry.

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