

# Legislation landscape

*Sailesh Mehta and David Claxton examine the changing landscape for fire safety legislation and enforcement practice as a result of the Grenfell Tower Phase 2 report, particularly in relation to the accreditation of fire risk assessors*

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THE REPORT for Phase 2 of the inquiry into the fire at Grenfell Tower was published on 4 September 2024, and Government published its response on 26 February 2025. The report examines the decades-long failures of policy, governance, and standard-setting that led to the tragic events of 14 June 2017. It makes 58 recommendations of which over half are directed to the Government.

Our interest in this article is in what the report may signal about future trends in fire safety enforcement with a particular focus on the future regulation of fire risk assessors.

### The report

One key criticism explored in the report related to the fragmented nature of the regulation and lines of accountability and responsibility in the oversight of the construction sector and related areas, such as the testing and licensing of products. For example, in June 2017, at the level of national government, the Building Regulations and statutory guidance were the responsibility of the Department of Communities and Local Government whereas the products used in construction were within the remit of the Department for Business, Energy, and Industrial Strategy, and fire and rescue services were part of the Home Office. At the local government level, building control was managed by approved inspectors and trading standards departments enforced the law in relation to the sale of construction products. The standards those products were required to meet were set by a different body again. The report concluded that this disordered regime was a barrier to effective regulation.

It proposed the creation of a new body which would perform many of the functions currently divided between multiple agencies. The new body, the Construction Regulator, would report to a single Secretary of State. The areas the report recommended that the new regulator should have responsibility for included:

- the regulation of construction products
- the fire testing of construction materials
- product certification
- the regulation and oversight of building control
- the licensing of operators to work on higher-risk buildings
- a monitoring and advisory role in relation to building control and statutory guidance
- and carrying out research.

Further, the report recommends that the Construction Regulator would have responsibility for accrediting fire risk assessors (FRAs). FRAs are the object of a separate recommendation that they should be subject to a system of mandatory accreditation to certify competence by setting standards for qualification and continuing professional development.

The need for accredited fire risk assessors has been highlighted for many years by those within the industry. Dame Judith Hackitt's *'Building a Safer Future'* report in 2018 highlighted significant concerns about the competence of fire risk assessors and made strong recommendations regarding qualifications and oversight. Dame Judith recognised that *"the experience, qualifications and training of those carrying out fire risk assessments varies considerably. This has been recognised by the fire risk assessment sector itself, and a number of risk assessment bodies have come together to develop a standard for >>>*

fire risk assessors....The current situation where fire risk assessments are provided by a range of individuals, some without demonstrable competence, cannot continue." The poor quality of many fire risk assessments has been the subject of complaint in criminal courts and has resulted in the prosecution of risk assessors when the quality of their risk assessment has fallen woefully short of the requisite standard of competence.

The Coroner's Inquest following the Lakeland House fire resulted in a Rule 43 letter (now called a Prevention of Future Deaths report) which was issued by Judge Frances Kirkham in March 2013. The evidence given at the inquest indicated that fire risk assessors may have no training, qualifications, or expertise in this field.

### The response

The government has accepted nearly all of the recommendations, including a change in the definition of high-risk building where the definition will not be limited to buildings over 18 metres in height. One consequence of this change is that fire and rescue authorities will have to adapt their inspection and monitoring practices to include the new definition of high-risk buildings. The majority of enforcement action by fire authorities undertaken in recent years, including prosecution, has resulted from the inspection of premises classed as high-risk. Those responsible for premises falling within the expanded definition (which though not settled will encompass premises housing vulnerable people) would be well-advised to start looking at their fire safety arrangements now. An obvious example is the assisted living sector.

The government expressly rejected a small part of the proposed remit of the new regulator, namely product testing and certification and issuing compliance certificates as it was considered that this would produce a conflict of interest. Nonetheless, the role envisaged is significant and wide-ranging.

### Fire risk assessors

The response advises that the government is assembling a panel of experts and academics to advise on the reform needed in relation to fire engineers to ensure they are driving safety in design and delivery. New legislation is planned that will make it a mandatory requirement for FRAs to have their competence independently verified by a UKAS-accredited certification body which will be overseen by a regulator – presumably the construction regulator. In a separate section of the response, the government advises that the certification bodies (in the plural) will be required to use standards currently being developed by the British Standards Institution (BSI), against which they must assess competence.

The BSI is developing BS 8674 *Built environment – Framework for competence of individual fire risk assessors – Code of practice*. As at 17 March 2025, the comment resolution process began. The remaining stages thereafter are approval and publication for which there is currently no timeline.

The response is short on detail so far as the future of FRAs is concerned, but it appears that the Government may envisage more than one certification body. A recent Home Office survey of FRAs, published on 30 September 2024, makes reference to: "professional registers and certification bodies, including groups such as the Institute of Occupational Safety and Health and Fire Risk Management Group." The context is different so the terminology may not have the same meaning as in the response, but given the context it provides

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a clue that the plan is for such non-governmental bodies to assume responsibility for the licensing and registration of FRAs, with the construction regulator supervising those separate bodies. If this is right, it represents a departure from the recommendation in the report.

The future regulation of FRAs warrants careful consideration as it is likely to present serious legal and practical challenges and much remains unanswered about how the requirement for accreditation will be implemented, policed, and enforced.

The first challenge is that no-one knows how many FRAs there are currently operating in the UK. The FRA survey begins with the observation: *"there is very limited existing evidence about who FRAs are and how they complete their role"*. This survey had 1,268 assessor responses but as was acknowledged in the findings, the fact of the survey has been advertised narrowly, including through professional membership bodies, so there was likely bias towards those assessors who were members, to the exclusion of those who were not. It is reasonable to extrapolate from the survey the conclusion that FRAs operating in the UK are numbered in the low thousands. There is no precise figure for the number of properties that require a fire risk assessment; ONS data suggests there are close to half a million houses in multiple occupation (HMOs), which represent just one of the many categories that require assessing. Once hotels, hospitality venues, student accommodation, and workspaces are added – to name just a few – the total number must be in excess of one million. The point being that there is a vast demand for assessors.

Second, there is no single route into the profession and therefore no common set of experiences or qualifications that determine or define competence.

Third, the administrative exercise alone in processing applications for accreditation, presumably from thousands of putative applicants, if it is to be at all meaningful and rigorous, will be an enormous administrative undertaking

for the body (or bodies) charged with performing that function.

Fourth, the mechanism of professional regulation is extremely complex. It is not clear at present if the accreditation will be akin to the Gas Safe system, where the HSE subcontracts Capita to administer the scheme. That is a comparatively simple regulatory process whereby there is a prohibition (backed up by a criminal offence) on undertaking certain works unless accredited. Other professional regulation is more involved with codes of practice, a system for complaints, investigation, and a legal process for determining those complaints and deciding on the consequences for the professional – most professional bodies operate the latter system, from doctors to lawyers, architects and surveyors, a similar process is followed. It is difficult to imagine the government providing the resources and funding to construct anything like this so the Gas Safe example is probably closer to what should be expected.

Fifth, if that is right, enforcement will be largely reliant on prosecution. Currently, fire and rescue authorities undertake prosecutions for offences under the Regulatory Reform (Fire Safety) Order 2005, for a wide range of offences which include the production of deficient assessments by assessors. It may be that either the construction regulator or fire authorities would be assigned responsibility for prosecutions for operating without accreditation. The difficulty with prosecution as an enforcement mechanism is that regulators are typically reluctant to prosecute as it is time-consuming, costly, and (particularly at present) incredibly slow.

## Conclusions

It is worth considering the steps that will be required to bring the new regulatory regime to life. First, the British Standards Institute will have to publish its finalised standard. Second, parliament will have to pass primary legislation to set the framework for the system of regulation. Third, the certification body or bodies will have to obtain their own accreditation from the UKAS. Finally, individual FRAs will have to go through the process of obtaining their own certification.

On any view, the steps necessary to implement industry-wide regulation will take several years during which time FRAs will continue to operate as before. Uncertainty will make it hard for individuals and businesses to plan for the near-term future and for as long as things continue as they are, the dangers of an unregulated industry will also continue. At a minimum, the government should make it clear the mode of regulation it intends to adopt and who will have responsibility for accreditation and enforcement.

A competently-performed fire risk assessment is fundamental to ensuring building safety and protecting lives. It requires thorough evaluation of building materials, compartmentation, escape routes, fire detection systems, and suppression measures. When properly conducted, such assessments identify hazards and prescribe proportionate mitigation strategies before tragedy occurs. There is an urgent need to ensure risk assessors are sufficiently competent. The fire industry has recognised the urgency of addressing the problem. The Lakanal House inquest, Dame Judith's report, and Grenfell Phase 2 highlight the need for reform in this area. Reform is necessary and Government need to show some urgency in addressing this continuing risk. ◀

