

Title: Enforcement of the Regulatory Reform (Fire Safety) Order 2005 in privately-owned Crown custodial premises

IA No: HO 0279

Lead department or agency:

HOME OFFICE

Other departments or agencies:

MINISTRY OF JUSTICE

Impact Assessment (IA)

Date: 14/9/2017

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary legislation

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Summary: Intervention and Options

RPC Opinion: Not Required

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	One-In, Three-Out?	Business Impact Target Status
£0.4m	£0m	£0m	NA	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

Inspection and enforcement of fire safety in Crown owned or occupied custodial premises is intended to be carried out by Crown Premises Fire Inspection Group (CPFIG) inspectors, authorised or appointed under article 25 of the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order). The government wants a national organisation to provide a) consistent and proportionate fire safety expertise and compliance advice to those responsible for its custodial premises; and b) a strategic overview of fire safety in these high risk premises. Recent contracting out and PFI arrangements mean that a number of previously Crown owned custodial premises (~ 5%) no longer meet the ownership test; and, where this is the case, the correct enforcing authority is now the local fire and rescue authority. The Fire Safety Order therefore needs to be amended to establish that Crown inspectors have sole jurisdiction over fire safety standards in custodial premises, irrespective of the contractual ownership arrangements that apply.

What are the policy objectives and the intended effects?

The policy objective is to ensure that there is a single national organisation in England and in Wales with the responsibility and skills and expertise necessary to:

- Provide a strategic oversight of fire safety compliance across the whole of the Crown's custodial estate;
- Offer proportionate fire safety advice to those responsible for the safety of occupants of these premises; and,
- Escalate any concerns (through appropriate Departmental structures) that the management of fire safety and/or the fire precautions in place in any particular premises may be insufficient to adequately reduce risk to life from fire.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 - Do nothing (baseline). Fire and rescue authorities (FRAs) will continue to have the power to enforce the provisions of the regulations in those custodial premises where the Crown does not meet the test of ownership set out in the Order.

Option 2 – Amend the Fire Safety Order to provide that only Crown inspectors, appointed as inspectors or authorised by the Secretary of State, are enforcing authorities for the purposes of the Order in all custodial premises, irrespective of the contractual or leasing arrangements.

Will the policy be reviewed? See section J below. If applicable, set review date:

Does implementation go beyond minimum EU requirements?	No			
Are any of these organisations in scope?	Micro No	Small No	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: NA		Non-traded: NA	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Nick Hurd

Date: 14/9/2017

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0.40

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

No monetised costs associated with this option have been identified.

Other key non-monetised costs by 'main affected groups'

There will be a small cost to the public sector of having to amend the Fire Safety Order. There is also an opportunity cost to the public sector of the CPFIG having to carry out inspections in more prisons.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	0.1	0	0.4

Description and scale of key monetised benefits by 'main affected groups'

There is a one off saving of £70,000 associated with fire and rescue authorities not having to carry out initial inspections of each custodial premises. There will be savings of around £12,000 per year due to fire and rescue authorities not requiring the secure email methods that they would have needed to inspect custodial premises. There is a saving of around £11,500 per year associated with fire and rescue authorities not requiring the training they would need to undertake custodial premises inspections. It is likely that the affected authorities would form a custodial premises working group under the do nothing option to address consistency and application across the private sector custodial estate. Not having to do this would generate a saving to fire and rescue authorities of around £15,000.

Other key non-monetised benefits by 'main affected groups'

Fire and rescue authorities are able to put more resource into carrying out inspections from their current risk based inspection programme. There are savings to the National Fire Chiefs' Council (NFCC) as they would not have to amend the national data collection and audit form used by fire and rescue authorities to include custodial premises. Information on custodial premises need to be maintained in a secure environment, so there is a saving associated with authorities not having to incur information security costs. Fire and rescue authority staff would also require security clearance to access custodial premises, so there is a saving to the Home Office associated with not having to process these checks.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The baseline option is that fire and rescue authorities enforce the provisions of the Fire Safety Order in those custodial premises where the Crown no longer meets the test of ownership set out in the Order. In reality this does not currently happen as Crown inspectors have been enforcing these provisions under a temporary arrangement. However, if nothing is done the temporary arrangement will lapse and fire and rescue authorities will be required to enforce the Order's provisions. Therefore, the costs and benefits are assessed against the baseline option that fire and rescue authorities are required to enforce the provisions. That is, the benefits of option 2 are based on the costs that would be incurred if the temporary arrangement ceased and fire and rescue authorities were required to enforce the provisions.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	Score for Business Impact Target (qualifying provisions only) £m:
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Costs: 0

Benefits: 0

Net: 0

0

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

- 1.1. This Impact Assessment assesses the proposal to amend the Regulatory Reform (Fire Safety) Order 2005 (“the Fire Safety Order”) to provide that those appointed or authorised by the Secretary of State to enforce the Fire Safety Order in Crown owned and occupied custodial premises are able to do so in the small number of custodial premises which no longer meet the test of Crown ownership as set out in the Order.
- 1.2. The Fire Safety Order defines the “owner” for the purposes of establishing the enforcing authority. An ‘owner’ is the person who already receives or would receive the rackrent where the premises are let for that amount. “Rackrent” is defined as at least two thirds of the rent at which the property might be expected to be let free of all usual tenant’s rates and taxes and deducting from it the probable average cost of the repairs, insurance and other expenses (if any) necessary to maintain the property in a state to command such rent.
- 1.3. Legal advice is that the Crown cannot be the owner of a premises where it has leased it to a private contractor at a peppercorn (i.e. very low) rent or at no rent. This is because the Crown will not be receiving a rackrent and would not be able to let the premises out again for a rackrent because it has already granted exclusive occupation of the premises to the private contractor. However, the private contractor would be able to do so. The Ministry of Justice (MoJ) have reviewed the leases that are in place for privately operated custodial premises and found that a number (roughly 7%) do not meet the ownership test set out above. In these cases, the private contractor is the owner for the purposes of the Fire Safety Order and, as a consequence, the correct (i.e. lawful) enforcing authority is the local fire and rescue authority in which the custodial premises are situated.
- 1.4. When the Fire Safety Order was implemented, the clear policy intent was that Crown inspectors (i.e. those appointed or authorised by the Secretary of State under art 25(1)(e)) would be the enforcing authorities in all custodial premises. Government guidance to the enforcing authorities says “For the avoidance of doubt all civilian prisons, young offender institutions, immigration detention, holding or removal centres, court custody suites, customs and excise detention areas are the responsibility of the Fire Inspectors of the Crown Premises Inspections Group regardless of whether they are operated by the relevant Government department or contracted out.”
- 1.5. However, in cases where ownership been transferred from the Crown to a private company by virtue of the contractual or leasing arrangements, then the correct (i.e. lawful) enforcing authorities are the local fire and rescue authorities in which the relevant premises are situated.

Application to the Devolved Administrations

- 1.6. The Fire Safety Order applies in England and Wales only. Officials in the Welsh Assembly Government have indicated that they are content for the Home Office to amend the Order in respect of England and Wales. Home Office Ministers have written to the Welsh minister responsible for fire to confirm this.
- 1.7. Fire safety legislation in Scotland and Northern Ireland is a devolved matter and the enforcement of similar fire safety provisions in Crown owned and occupied premises is organised differently. There is one fire and rescue service in Scotland and no discrete Crown inspection body: everything falls to the Scottish FRS to manage, though enforcement arrangements/mechanisms differ in accordance with the ownership test. The Scottish Government and Scottish Prison Service have confirmed that they are content with the proposal and do not envisage there being any adverse implications around the introduction of secondary legislation for England and Wales. In Northern Ireland, all custodial premises are currently owned by the Crown and are the enforcement responsibility of Health and Safety Executive for Northern Ireland. Although officials in Northern Ireland do not anticipate any immediate need to amend their legislation (the Fire and Rescue Services (Northern Ireland) Order 2006), we have raised the potential for this issue to arise in the future and suggested they may wish to consider whether a similar amendment may be appropriate.

One In - Three Out

- 1.8. It is in the interests of efficiency, effectiveness and public safety (both employees and those being detained) for there to be single fire safety enforcement bodies in England and in Wales, rather than potentially 48 different fire and rescue authorities.
- 1.9. As this proposal is to maintain the original policy intent of the Fire Safety Order, and the proposal regulatory amendment has no costs associated with it, it does not fall within scope of the OI30 rule.
- 1.10. MOJ have commented that the Government is committed to 'develop a sensible plan for prison reform that will deliver better outcomes, improved public safety and lower costs for taxpayers. Fire incidents are a potentially major cause of injury and death in the custodial estate and fire incidents create major disruption to the operational regime. Ensuring that the right apparatus is in place for ensuring fire safety is managed effectively will be a key enabler of the prison reform programme.

A.2 Groups Affected

- 1.11. The groups affected are:
 - Fire and Rescue Authorities (FRAs)
 - Crown Premises Fire Inspection Group (CPFIG)
 - The Ministry of Justice (MoJ), Home Office Immigration and Border Force
 - The National Offender Management Service (NOMS)
 - Private custodial premises

Interim “work-around” arrangement

- 1.12. When the disparity between the government’s policy expectation and the legal position in relation to some contractual /leasing arrangements became clear, the Chief Fire and Rescue Adviser for England (now the Strategic Fire and Rescue Adviser), who has responsibility for managing the Crown enforcement function, brokered a short term interim arrangement with those fire and rescue authorities identified as the correct enforcing authorities for specific contracted out custodial premises.
- 1.13. Under this arrangement the relevant fire and rescue authorities have agreed to appoint – on a short term basis - Crown inspectors to act on behalf of the fire and rescue authority in respect of the relevant contracted out premises in their areas. This allows the current team of Crown inspectors to maintain their inspection programme and strategic oversight of fire safety in all custodial premises and to report the outcome to the relevant local fire and rescue Authority. If a Crown inspector determined that the outcome of an inspection indicated that an enforcement, alteration or prohibition notice (requiring breaches of compliance to be remedied) should be served against the provider, it would be for the relevant Authority – rather than Crown inspectors and the Strategic Fire and Rescue Adviser - to consider and take appropriate action.

A.3 Consultation

Within Government

- 1.14. Fire safety in the majority of custodial premises is the responsibility of Ministry of Justice. The Home Office is responsible for fire safety in immigration detention, holding and removal centres, and in detention areas operated by HM Revenue and Customs and Border Force. The day to day management of the government’s custodial estate is managed centrally by Ministry of Justice through a shared estates hub arrangement.
- 1.15. The Home Office has worked closely with Ministry of Justice shared estates hub to identify issues and agree the preferred option of legislative change. There is no appetite within the affected Departments for local fire and rescue authorities to be the enforcing authority in these premises. It is a key Home Office Ministerial priority to ensure that Immigration and Border Force custodial premises deliver an acceptable level of fire protection to both its employees and to those being detained. Ministry of Justice Ministers are committed to the development of ‘a sensible plan for prison reform that will deliver better outcomes, improved public safety and lower costs for the taxpayer. Fire incidents are potentially a major cause of injury and death in the custodial estate and fire incidents create major disruption to the operational regime. Ensuring that the right apparatus is in place for ensuring fire safety is managed effectively will be a key enabler of the prison reform programme.
- 1.16. The practical effect of the legislative clarification will be to provide Crown inspectors, with formal enforcement powers, up to and including prosecution, in respect of those

premises which form part of the government's custodial estate in England and Wales but which are operated by private providers.

Public Consultation – with fire and rescue authorities

1.17. Discussions with individual fire and rescue authorities and with the National Fire Chiefs' Council (formerly the Chief Fire Officers' Association) have confirmed that, in most cases, local fire and rescue authorities are content not have an additional responsibility for enforcement in some custodial premises. They recognise that specialist expertise is necessary and that the current arrangements deliver a consistent and cost-effective overview of fire safety across the custodial estate, allowing each to focus its fire safety enforcement resources on other high-risk premises in their areas. They also recognise that there would be significant and ongoing costs for them associated with a need for their fire safety officers to be adequately trained and security cleared to operate in a new and potentially high risk custodial environment.

Public Consultation – with private providers of custodial premises

1.18. MOJ's shared estates hub alerted the six private providers of custodial premises (Serco, Sodexo, Tascar, Mitie, G4S and MTC Novo) to the issue in September 2016 and confirmed that the Government would look to urgently re-establish, through legislation, the accepted policy position that Crown inspectors are the correct enforcing authorities for these particular premises. Although the contractors were given the opportunity to raise concerns or issues about the proposal to re-establish Government policy through legislative, they have not raised any substantive issues. While they are aware that the effect of proposed legislative change would provide Crown inspectors with formal enforcement powers, their assumption to date has been that this was already the case.

B. Rationale

- 2.1. The rationale for policy intervention is the need to:
 - provide absolute clarity for enforcing authorities about responsibilities in these particular premises,
 - cost effectively retain expertise and skills within a single organisation, and
 - allow a holistic view to be taken of the appropriateness of the Crown's fire safety strategy and expectations across all Crown-owned custodial premises.
- 2.2. This is necessary because, unlike in other classes of building or premises, the key fire safety objective of ensuring everyone on the premises lawfully is able to take appropriate action, including evacuating quickly and easily in the event of a fire, is not viable in the majority of custodial environments. It is therefore more challenging for those responsible for fire safety in custodial premises (generally Ministry of Justice, National Offender Management Service (NOMS), Immigration Estates and Border Force) to implement measures which are adequate and appropriate to prevent fires

and ensure that the life risk to employees and detainees, in the event of one occurs is minimised as far as reasonably practicable.

- 2.3. Home Office and Ministry of Justice legal advisers have identified the relevant legislative definitions for the range of custodial premises and the Home Secretary has agreed that these should form the substance of an amendment to article 25 the Fire Safety Order, establishing Crown inspectors as the enforcing authorities for all civilian prisons, young offender institutions, immigration detention, holding or removal centres, court custody suites and HM Revenue and Customs and Border Force detention areas. To reflect the composition of the existing custodial estate, Ministers also want to ensure that the amendment is broad enough to ensure Crown inspectors are identified as the enforcing authorities in Secure Training Centres and in Approved Premises.
- 2.4. This would ensure that the government and Welsh government's current policy position is maintained in respect of the enforcement of the Fire Safety Order by Crown inspectors in all Crown custodial premises in England and in Wales, irrespective of any particular contractual or leasing arrangements.
- 2.5. The effect of the legislative amendment we are seeking to achieve would be to define the range of custodial premises for which Crown inspectors are the enforcing authority, by reference to relevant legal definition (eg: to the Prisons Act 1952 for prisons; s.147 of the Immigration and Asylum Act 1999 for immigration or Border Force detention, holding or removal centres, etc).
- 2.6. Although there other types of premises providing detention facilities, these are not, or have not been for a very long time, owned or occupied by the Crown. For these premises (including for example, secure health institutions (which are responsibility of the NHS), police custody suites (local police forces) and secure children's homes (local authorities and/or charities) the fire and rescue authority in which they are situated is – and will continue to be - the correct enforcing authority.

C. Objectives

- 3.1. The policy objective is ensure that:
 - a) the government has a consistent and holistic overview of the fire safety standards that are in place in all Crown custodial premises – irrespective of whether they have been contracted or leased in the recent past to a private provider - and,
 - b) the government is aware of any improvements which are advised or required by Crown inspectors to deliver an acceptable level of fire safety and regulatory compliance.
- 3.2. The government wants to rely on the expertise and specialist technical knowledge that is in place in the team of Crown inspectors to inform its strategic overview of fire safety standards and improvements that may be appropriate to implement. It wants

to manage the reputational damage that might accrue if a local fire and rescue authority, without an experienced understanding of the complexity and challenge associated with managing fire safety in custodial premises were to serve formal enforcement, alteration or prohibition notices. Although these powers will be available to Crown inspectors in respect of privately owned custodial premises, in practical terms, the team has the relationships and protocols in place to access the providers and the relevant fire safety policy leads in Ministry of Justice and the Home Office to ensure any breaches of compliance can be effectively addressed without recourse to formal enforcement action.

- 3.3. A successful outcome will be that the expectations of the enforcing authorities for custodial premises which were set out clearly in the government's policy guidance on enforcement will be re-established. The proposed legislative amendment will establish, now and in the future (to allow for different procurement models to be developed), that the responsibility for enforcing fire safety compliance across the government's custodial estate in England and in Wales is the responsibility of Crown inspectors appointed or authorised under article 25 of the Fire Safety Order.

D. Options

- 4.1. Two options have been considered in respect of this issue.

OPTION 1: Do nothing. Fire and rescue authorities will continue to have the power to enforce enforce compliance with the Regulatory Reform (Fire Safety) Order 2005 in those custodial premises where the Crown does not meet the test of ownership set out in the Order. The interim arrangement allowing Crown inspectors to enforce fire safety in privately owned custodial premises will expire.

OPTION 2: Amend the Regulatory Reform (Fire Safety) Order 2005 to ensure the original policy intent that Crown inspectors are the enforcing authorities for all Crown-owned custodial premises, based on the statutory definition of these classes of premises is maintained.

The preferred option is option 2.

E. Appraisal

Option 1: Do nothing. This is the baseline option against which the costs and benefits of the other option are assessed.

Option 2: Amend the Regulatory Reform (Fire Safety) Order 2005. The following costs and benefits are associated with this option.

COSTS

Business (Private Custodial Premises)

- 5.1. No significant costs are anticipated to fall on business as the compliance requirements under the Fire Safety Order will remain the same, irrespective of the enforcement authority.

Public Sector

- 5.2. Costs to the Home Office as the Department responsible for the Crown Premises Fire Inspection Group (CPFIG) are expected to be negligible. CPFIG would face the cost of having to enforce the provisions of the Fire Safety Order in these premises rather than the FRAs. Although CPFIG inspectors have to date enforced the provisions of the Fire Safety Order in these premises incorrectly, they would stop doing so under the do nothing option. Therefore, in comparison to the do nothing option there is a cost to CPFIG inspectors of having to enforce the provisions going forward.
- 5.3. The cost to CPFIG is likely to be negligible since under both options they would still be responsible for enforcing the provisions of the Fire Safety Order in custodial premises that are owned by the Crown. This means that costs, such as staff and training, will have already been incurred irrespective of this amendment.
- 5.4. There will be a small cost associated with amending the Fire Safety Order which will fall to the Home Office as the amendment will be carried out by the team responsible for the Regulatory Reform (Fire Safety) Order 2005.

BENEFITS

Business

- 5.5. No significant benefits are anticipated to fall on business as the compliance requirements under the Fire Safety Order will remain the same, irrespective of the enforcement authority. However, an unquantifiable benefit of this option is that the fire safety standards in place will be assessed in the context of a strategic overview, based on experience and technical competence in this specific type of premises. The benefit to the businesses is consistency and the use of well-versed relationships.
- 5.6. There may also be some benefits in terms of resource and time savings within these organisations in comparison to individual fire and rescue authorities becoming the enforcing authorities. This is because under the do nothing option FRAs would seek to establish an understanding of the fire safety strategies and measures in place in particular premises. This option to amend the Fire Safety Order would therefore reduce the burden on employees and allow them to carry out other tasks.

Public Sector (enforcement agencies)

- 5.7. There will be benefits to fire and rescue authorities as they will no longer be the enforcing authority for privately owned custodial premises in their areas, so they will not have to take action to enforce fire safety in custodial premises.
- 5.8. Some of these benefits would be one-off savings associated with fire and rescue authorities not having to take over the responsibility of the relevant custodial premises. There would be information security costs if fire and rescue authorities took over, as custodial premises information needs to be maintained in a secure environment. Fire and rescue authority staff would also require security clearance to access custodial premises,

which would impose a cost on the Home Office. Insufficient information has meant that we have not been able to monetise these potential savings.

- 5.9. There would be a one-off saving associated with fire and rescue authorities not having to carry out initial inspections of each custodial premises. This will result in a saving of £70,000 as fire and rescue authorities would have had to carry out a 4 person visit over 2 days, costing around £3,500¹ per custodial premises. There would also be a saving to the National Fire Chief's Council (NFCC) as they would not have to amend the national data collection and audit form used by fire and rescue authorities to include custodial premises.
- 5.10. A number of ongoing annual savings have also been identified. Fire and rescue authorities would be able to put more resource into carrying out inspections of premises using their current risk based inspection programme.
- 5.11. A secure email method would be required for FRA staff to communicate with Ministry of Justice and the custodial premises, which is expected to cost £600 per year per FRA². Allowing Crown inspectors to be the enforcing authority would therefore generate a saving of around £12,000 per year.
- 5.12. Under the do nothing option fire and rescue authority inspectors would require training regarding fire safety requirements in custodial premises and annual breakaway training which is required for all inspectors who work within custodial premises. This would cost around £11,500³. Therefore, under this option, there would be a training saving of £11,500 per year.
- 5.13. It is likely that the affected services would form a custodial premises working group under the do nothing option to address consistency and application across the private sector custodial estate. Assuming that one member of staff from each of the 20 services would attend twice a year; there would be a cost of around £15,000⁴. Under this option the working group would not be necessary, so there would be a saving of £15,000 per year.

NET EFFECT

5.14. The monetised costs and benefits of Option 2 are set out in the table below.

		Transition	Annual
Costs	No monetised costs	-	-
Benefits	Initial inspections saving	£70,000	-
	Secure email saving	-	£12,000
	Training saving	-	£11,500

¹ Based on the estimated salaries of the inspection team over two days

² Based on the cost of a Microsoft Citrix email system

³ Based on the estimated salaries of staff attending the course

⁴ Based on similar meeting structures to the NFCC and the estimated salaries of those attending

	Working group saving	-	£15,000
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5.15. The benefits of this option outweigh the costs. This option is likely to generate a saving (net present value) of £0.4m discounted over the 10 year period.

F. Risks

5.16. There are unlikely to be any significant risks associated with Option 2. This option delivers the policy outcome that was both intended by the Fire Safety Order and that has been operating effectively (albeit incorrectly) for the past 10 years.

H. Summary and Recommendations

6.1. The table below outlines the costs and benefits of the proposed changes.

Table H.1 Costs and Benefits		
Option	Costs	Benefits
2	<p><u>Monetised:</u> There are no monetised costs associated with this option.</p> <p><u>Non-monetised:</u> Small cost of amending the Fire Safety Order</p>	<p><u>Monetised:</u> £0.4m net present value over 10 years.</p> <p><u>Non-monetised:</u> Time saving to business of retaining current inspectors. Time and resource saving to FRAs.</p>

I. Implementation

7.1. The intention is to implement legislative change by April 2018, subject to Parliamentary agreement. The Government will introduce a subordinate provisions order under sections 1 and 4 of the Regulatory Reform Act 2001, subject to the affirmative resolution procedure.

J. Monitoring and Evaluation

8.1. We will review the arrangements for the enforcement of the Fire Safety Order in the Crown owned and occupied estate, including in custodial premises, when the Fire Safety Order is reviewed. No timeframe is established for this currently. We will be guided by the findings of the public inquiry into the recent Grenfell Tower tragedy and by the findings of the Hackett review into building regulations and fire safety.

K. Feedback

9.1. No feedback has been sought from providers or enforcing authorities on the impact of the legislative change.