

# FIRE RISK ASSESSMENTS: THE IMPORTANCE OF COMMUNICATION



Expert insight to help your business thrive



**NFU Mutual**  
BUSINESS INSURANCE

# CONTENTS

- 3** Introduction
- 4** What is a Fire Risk Assessment (FRA)?
- 6** Who is responsible for Fire Risk Assessments?
- 9** Insurance 'Reasonable Precautions' clause
- 12** Scenario: Failure to act on an FRA
- 13** Consequences of the scenario
- 14** Action planning: Communication is key

# INTRODUCTION



**Trevor Palmer,**  
Property Sector Lead,  
NFU Mutual

Whilst fire safety has always been a significant concern for those in the property sector, tragedies such as the Grenfell disaster of 2017 have underlined the importance of remaining constantly vigilant regarding the matter.

In this article, I'll give an overview of Fire Risk Assessments (FRAs), the potential consequences of non-compliance with FRA legislation when it comes to insurance matters, and the importance of clear communications between all parties.

## BACKGROUND AND REGIONAL DISTINCTIONS

Prior to the introduction of The Regulatory Reform (Fire Safety) Order 2005 England & Wales, fire safety in the UK was covered by approximately 70 separate pieces of legislation. The Act was therefore brought in to simplify fire safety. In Scotland and Northern Ireland, separate fire safety legislation was introduced in 2006 and 2010 respectively.

The content of this guide relates to legislation as applied to England and Wales. Whilst the legislation may differ in Scotland and Northern Ireland, the importance of communication and the need to comply with insurance policy terms and conditions are applicable UK-wide.

This report is not a technical document on the specifics of fire safety, nor does the content delve into the subject of fire detection and suppression equipment or systems. For that reason, I strongly recommend consulting fire safety and risk management professionals for information on technical fire safety matters.

Staying up to date with all relevant fire safety legislation is also essential to keep abreast of the legal requirements on fire safety matters.

## LINKS TO INFORMATION ON REGIONAL LEGISLATION

England and Wales: [legislation.gov.uk/ukxi/2005/1541/contents/made](https://legislation.gov.uk/ukxi/2005/1541/contents/made)

Scotland: [gov.scot/publications/general-fire-safety-legislation-overview](https://gov.scot/publications/general-fire-safety-legislation-overview)

Northern Ireland: [nifrs.org](https://nifrs.org)

This is intended as guidance only and cannot adequately address the differences of specific individual cases taking into account the size, nature and complexity of each building. Professional advice and guidance must always be sought where any doubt exists as to the responsibilities and extent of legislation on Fire Risk Assessments.

# WHAT IS A FIRE RISK ASSESSMENT?

The principal purpose of the FRA is the safety of occupants within premises, and is a legal requirement for all non-domestic premises to have an FRA. It produces a snapshot of how well-protected the property is to ensure the safety of all occupants in the event of a fire.

At the most basic level, an FRA identifies specific areas of fire risk, and provides any recommendations and corrective actions deemed necessary from the review.

An FRA does not have to be written down if there are fewer than five regular occupants in a building, meaning an FRA is the process, not necessarily a document. Irrespective of the number of occupants, the same rigour needs to be put into place, and it's still advisable to fully document and retain records accordingly.

## FRA FREQUENCY

There are no specific time periods in law for how often Fire Risk Assessments must be completed or reviewed. The law simply says that the person responsible must review it 'regularly' to make sure it's up to date.

**However, the responsible party must review it if:**

- there's reason to think it's no longer valid, e.g. if there's been a fire at the property
- there have been significant changes since the assessment was last carried out, e.g. major building works, changes to fire protection measures or access points to the building

- there are more people using the building or changes in occupancy, particularly paying attention to persons at risk.

The assessment itself may include a statement on the recommendation of how often the person responsible should review it. Best practice is to include an agreed interval to review.

## NON-DOMESTIC PREMISES\*

The legislation applies to all non-domestic properties including commercial and public buildings, such as:

- shops
- factories
- warehouses
- offices
- schools
- nursing homes
- businesses providing sleeping accommodation.

\* The fact the Act refers to 'non-domestic premises' is slightly confusing, as the legislation also applies to sheltered housing and the communal areas of blocks of flats. This includes buildings containing common parts of two or more dwellings, such as maisonettes and houses in multiple occupation (HMOs). The legislation does not apply to the individual dwellings within blocks of flats or HMOs.

Additional legislation will apply to fire safety measures that residential landlords will need to comply with, such as The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and HMO Management Regulations. These are not covered in this guide.

### REFORM UNDERWAY

In April 2020, the Government announced the first step in long-awaited legislative reforms to fire safety law. The new Fire Safety Bill proposes limited changes to the Regulatory Reform (Fire Safety) Order 2005.

At the time of publication, the changes only affect the residential buildings with multiple occupancy, including buildings with commercial use (for example a property with flats above a parade of shops). The Bill does not impose any new duties: it simply extends the scope of existing duties where it was previously unclear that they already applied to certain

parts of residential buildings with multiple occupancy.

#### The Bill applies to:

- the external walls
- anything attached to the walls, including balconies
- any common parts of the building, including doors or windows in the walls
- all doors between the domestic premises (individual flats) and the common parts.

Responsible persons with duties for such buildings will need to consider if any changes are required to their existing FRA.

More information on Fire Risk Assessments is available on the Government website: [gov.uk/workplace-fire-safety-your-responsibilities/fire-risk-assessments](https://www.gov.uk/workplace-fire-safety-your-responsibilities/fire-risk-assessments)





# WHO IS RESPONSIBLE FOR FIRE RISK ASSESSMENTS?

The Fire Safety Order introduced a legal duty for a responsible person to take all reasonable steps to ensure that fire safety levels are appropriate at all times by undertaking “general fire precautions”. This is defined as including measures:

- to reduce the risk of the inception and spread of fire
- in relation to safe escape routes and emergency escape lighting
- in relation to the detection of fire and the ability to warn of fire and fighting fire.

A **responsible person** should be deemed competent to complete a suitable and sufficient assessment for the particular building they are appointed to.

The **responsible person** is ultimately in charge of fire safety for the premises to which the Order applies. For larger, more complex buildings, it's advisable to appoint an independent professional Fire Risk Assessor.

At the time of writing, the Government are currently assessing responses to the ‘Call for Evidence’ relating to the consultation period on the Fire Safety Order that was launched in June 2019. Responses have identified areas for further consideration that include responsible persons understanding fire safety duties and their competence to carry out those duties.

There are many parties involved with the management, maintenance, ownership and occupation of non-domestic property, so establishing who is responsible and who will ensure all parties are aware of their duties and obligations is key. Thorough communication is therefore essential to avoid the risk of non-compliance.

Examples of where responsibility lies for FRAs and who might carry them out are shown on the following pages. **Professional advice should always be sought where there is any doubt in relation to any particular circumstance or property.**



### RESIDENTIAL HMOS

The landlord is responsible for fire safety matters in the common parts of their property. If the landlord has sufficient experience, knowledge and training in this area, then the landlord will generally take on the duties of the **responsible person**. Without sufficient knowledge, a landlord should consult a suitable person with the necessary competence and where necessary appoint an independent and accredited Fire Risk Assessor.

Where necessary, a landlord should also consider consulting an HMO Enforcement Officer. The HMO Enforcement Officer's role is to ensure that the properties in their area are safe to use and fit for purpose. A landlord will need to assess the demands on their time and whether sufficient attention can be given to the importance of FRAs, where they operate a sizeable portfolio of properties.

### BLOCKS OF FLATS

For blocks of flats, the **responsible person** is usually the freeholder or a Residents' Management Company (RMC) or Right To Manage Company (RTM). However, these parties may give these responsibilities to a managing agent (also known as a block manager). A property manager within the managing agent office might carry out the FRA themselves, or they may employ someone else to do it, such as an independent Fire Risk Assessor.

The **responsible person** must ensure they meet their duties by carrying out the FRA and communicating the results to the appropriate parties, including where applicable: directors of RMCs and RTMs as well as the freeholders. The outcomes and recommendations must be fully understood and acted upon where required.

## COMMERCIAL PROPERTY

The **responsible person** for commercial property is either the employer, or the person who has ‘control of the premises’ in connection with their business use of the property.

It can be difficult to determine who has ‘control’ of premises in the context of commercially-leased properties. Government guidance suggests that this can be both landlord and tenant, particularly where there’s a split repairing responsibility, or where the tenant only occupies part of the property.

If there are common parts – such as in a shopping centre, or office complex with multiple tenants – it’s likely that the landlord/management company is the **responsible person** for these parts, with tenants being the **responsible person** for each unit. Landlords and tenants should therefore make sure they are clear who has what responsibilities in respect of property for the purposes of the Fire Safety Order.

Landlords and commercial tenants will have a duty to ensure the business premises are well maintained and a safe place for people to work. The law and the terms of a commercial lease will determine whether the landlord or

the tenant is responsible for certain aspects of the property. It’s essential all parties understand their respective responsibilities.

Depending on the size and complexity of the premises and the competence and knowledge of the responsible person, they are likely to employ the services of an independent Fire Risk Assessor to carry out the FRA. Outcomes and recommendations must be fully understood and acted upon and clearly communicated to all relevant parties.

In any of the above scenarios, even with the appointment of an external Fire Risk Assessor, the **responsible person** can still be held accountable if mistakes are made, including with any communications or any misunderstanding of the guidance and advice. The Fire Risk Assessment Competency Council has produced a guide on how to choose a competent Fire Risk Assessor. Details can be found here: [ife.org.uk](https://ife.org.uk)



# INSURANCE ‘REASONABLE PRECAUTIONS’ CLAUSE

**The reasonable precautions clause, which commonly appears in insurance policies, requires the policyholder to take steps to safeguard the insured property to prevent or minimise damage. Policy wordings of the clause will vary depending on the insurer and type of policy in force.**

Regardless of the wording, the purpose of the clause is to ensure that the policyholder will not refrain from taking necessary precautions just because they are covered against loss by the policy. The requirements and need to meet the terms of the reasonable precautions clause is ongoing throughout the policy period.

Adhering to and complying with all legal requirements and regulations – imposed by any authority – that will either prevent or minimise damage to a property is just one area that falls within the reasonable steps a policyholder must take to meet the requirements of the clause. Failure to comply with legal requirements can therefore be viewed as a breach of this clause and risks repudiation of a claim in the event of a loss, where the breach is material to the loss.

Carrying out an FRA and acting upon the outcomes of the FRA is a legal requirement and additionally is a very important means to improve fire safety to prevent or minimise damage and risk to occupants.

## **FAIR PRESENTATION OF THE RISK**

Additionally, The Insurance Act 2015 states that “before a contract of insurance is entered into, the insured must make to the insurer, a fair presentation of the risk”. When presenting risk information to an insurer, the content must provide either all material information, or be sufficient to prompt an insurer to request further clarification.

As no two property risks are the same, material circumstances cannot be 100% pre-defined. The key is whether a fact would influence an underwriter’s decision on the risk. In practice, just because a question hasn’t been asked about a risk, it doesn’t mean the relevant facts can be withheld. If there is any doubt as to whether a fact should be disclosed, this should be fully discussed with the insurance adviser.



It's not common practice for the majority of the insurance market to request sight of the FRA report. In general, market assumption is that all parties involved with the ownership, management and occupation of property are adhering to legal requirements on fire safety. As will be seen in the following claim scenario, this general approach is not necessarily in the best interests of all parties.

In the interests of clarity, volunteering the FRA report to the insurer is a means to be thorough and ensure a fair presentation of the risk is disclosed on the very important issue of fire safety. It also places the onus on the insurer to raise further query where necessary, rather than assume legal requirements are being met. This is a better position for both the policyholder and insurer to be in, should a fire loss occur in the future.

As previously stated, the principal purpose of the FRA is the safety of occupants within a premises by reducing the likelihood of fire as well as limiting the spread and ensuring occupants are aware of the importance of fire safety. However, failure to comply can also have severe financial consequences.

It's therefore essential that the outcomes and recommendations of an FRA are fully understood, and the action required to meet the requirements are clearly communicated to all relevant parties.

**Carrying out the FRA alone will not meet the requirements of the 'reasonable precautions' clause unless the necessary improvements and updates highlighted in the report are put into effect.**

Furthermore, where the FRA prompts action to improve fire safety measures, these could be considered as a material fact that must be disclosed to insurers to meet the duty placed on policyholders by the Insurance Act 2015. Should facts not be disclosed, and a loss arises that the FRA outcomes could have prevented or minimised, this again risks repudiation of any subsequent claim.

# SCENARIO: FAILURE TO ACT ON AN FRA

**This hypothetical scenario demonstrates the importance of meeting the terms and conditions of an insurance policy and the potential risks of failing to meet FRA legal requirements. It also illustrates the benefits of submitting an FRA report to insurers, whether requested or not, as well as the importance of effective communication.**

A residential managing agent arranges the insurance for a Victorian building that has been converted to a complex of luxury flats. The property is four storeys high and consists of various wings of the property all converging to a central atrium that forms the common entrance where all occupants access the building.

During a risk survey by the insurer, confirmation is sought by the risk surveyor that the FRA has been carried out; the managing agent confirms this is the case. The report is not requested by, nor submitted to the insurer voluntarily. The FRA has been carried out by an independent professional Fire Risk Assessor. Within the report is an alert of a risk of “undetected fire spreading horizontally along the undivided roof voids that run across the upper floor throughout the development.” To minimise the spread of fire and improve the safety of occupants, the report logs a requirement to install fire detection systems within the roof voids, or to create fire break separations between every upper storey flat within the void.

Due to concern about costs and the impact on leaseholders’ service charges, a delay arises, with protracted communications between the managing agent, freeholder and directors of the RMC. Subsequently, other matters take priority and the issue falls out of the diary system, remaining unresolved and the requirement is not acted upon.

A year later, an electrical fault within a bathroom ceiling extractor fan in an upper floor flat causes a fire that smoulders for several hours, gradually spreading along the roof void. The lack of a detection system means occupants are unaware of the fire until the smell of smoke is noticed, and flames become visible through the roof. With no fire break separation, the spread of fire is also undeterred.

The outcome is substantial fire damage to the upper floors and roof of the property, along with damage to lower floors caused by water cascading down the building from the fire brigade’s actions to control and extinguish the fire. In addition to the material damage, many leaseholders within the damaged wing cannot occupy their flats for several months during repairs and require alternative accommodation.

Whilst the FRA requirements would not have prevented the inception of the fire, had the report requirement been acted upon, the extent of fire damage could have been mitigated either by earlier detection of the fire or fire breaks preventing the spread of fire along the roof voids.



# CONSEQUENCES OF THE SCENARIO

**The previous scenario involves potential non-disclosures issues, non-compliance with policy terms and breach of the ‘reasonable precautions’ condition.**

When an insurance claim of this nature is submitted, the insurer will fully investigate the cause of the loss, most likely by appointing a Claims Loss Adjuster. For a claim to be successful, the insurer will have to be satisfied that the policyholder has met the policy terms and conditions and taken all reasonable precautions to safeguard the property to prevent or minimise damage.

Any failure in those areas – or where it is deemed the policyholder has not met legal requirements on fire safety matters – will also have to be assessed. If a breach, non disclosure or failure to adhere to the law is material to the loss or contributes to the extent of the loss, the provision of indemnity under the policy may come into question.

Any doubt about whether an FRA is up to date, or if any matters highlighted by an FRA have not been addressed, leads to a worrying time in the event of a claim that could have been avoided. In addition to putting the safety of occupants at risk, a sizeable uninsured loss can lead to a loss of an investment or leaseholders’ or tenants’ homes, or impact on

the livelihood of a business. Such circumstances can also open up legal action to pin-point where the blame lies for any error that can be attributed to a repudiated claim.

The scenario highlights the importance of thorough communication between all relevant parties on all aspects of an FRA, including addressing the findings and recommendations of the report. The issue can equally apply to commercial properties and residential landlords of HMOs where lack of – or a breakdown – in communication arises.

Having robust procedures in place on all matters of FRAs will not only minimise the fire risk, but will also give confidence that policy terms have been met in the event of a claim.



# ACTION PLANNING: COMMUNICATION IS KEY

Regardless of the type of property, or the size of property portfolio, the responsible person should establish effective communication processes to ensure the flow of information between all relevant stakeholders.

In addition to ensuring there is a documented flow of information, these communications can also be utilised to influence behaviours and attitudes to fire safety matters in general. The fundamental goal is for a meaningful, relevant and accurate flow of information that provides clarity for all stakeholders.

The following action plan is for guidance only. It must be recognised that no two properties are the same. A plan specific to an individual property or portfolio of properties will be required and consultation with a professional independent Fire Risk Assessor is recommended.

“ The fundamental goal is for a meaningful, relevant and accurate flow of information that provides clarity for all stakeholders. ”

## STEP ONE: THE RESPONSIBLE PERSON

- Is the appointed **responsible person** the right person for the job, taking in to account the size, nature and complexity of the property?
- How does that person keep up to date with legislation relating to FRAs? Should a professional fire safety consultant be appointed?

## STEP TWO: MAP THE STAKEHOLDERS

- Ensure a record is drawn up of all relevant parties. These may include, but are not limited to:
  - Owners
  - Commercial and residential managing agents
  - Commercial tenants
  - Leaseholders
  - Directors of RMCs and RTMs.
- Verify that all are aware of their responsibilities when it comes to the FRA
- Confirm that the process and ongoing dealings are all effectively communicated, documented, followed up and acted on
- Ensure records of all contact details are kept up to date.

### STEP THREE: MANAGE ONGOING COMMUNICATION

- Consider what's the best method of information output depending on the audience and extent of information required. Tools may include emails, newsletters, reports, team briefings, workshops, training and presentations
- Throughout all communication, emphasise the importance of engaging with the FRAs, focusing where necessary on the importance of an FRA and the potential legal and other implications of non-compliance
- Identify and act upon any existing gaps in the communication chain and ensure all stakeholders participate appropriately
  - Have the outcomes of the most recent FRA been thoroughly communicated, understood and acted upon where necessary?
  - Has any misunderstanding been checked to provide clarity?
- Are all parties aware of current legislation on Fire Safety?
  - Put suitable mechanisms in place to stay up to date and act upon any changes in obligations and procedures, and communicate them to all relevant stakeholders.

### STEP FOUR: REMAIN PROACTIVE BETWEEN ASSESSMENTS

- Between FRAs, consider whether the safety of occupants within the building has been jeopardised by any alterations, extensions or work at the property
  - Has the full specification of the works been assessed?
  - Has all necessary action been taken?
  - Has the FRA report been updated?
- Make sure the 'reasonable precautions' condition on the property owner's insurance, and – where applicable – tenants' business insurance policy, is met at all times during the policy period
  - Are all stakeholders aware of the policy wording and the potential implications if they are not met?
- Has the insurance adviser been consulted where required and updated on all FRA matters?
  - The Insurance Act 2015 changed risk disclosure requirements and placed more emphasis on policyholders to provide a fair representation of the risk
  - Even if the insurer does not request sight of the FRA report, is it advisable to share it with them?
- Ensure that all records are maintained accurately on all aspects of the FRA and kept up to date at all times. Implement a regular review of all records. Question if at any stage of the process additional professional advice should be sought.

# SUMMARY

The importance of fire safety matters and how an FRA identifies and addresses fire risk cannot be overstated. The safety of occupants is paramount when it comes to ownership and management of property.

It is essential to create clear and concise communications by engaging with and obtaining buy-in from all relevant stakeholders, ensuring fire safety issues receive the focus and priority they deserve.

Failure to comply with fire legislation has far reaching consequences, potentially impacting on many people. The implementation of an effective communication plan can substantially reduce the risk of non-compliance.



**NFU Mutual**

If you'd like this document in large print, braille or audio, just contact us.

To find out more about how we use your personal information and your rights, please go to [nfumutual.co.uk/privacy](https://nfumutual.co.uk/privacy).

To stop us contacting you for marketing write to Marketing Department (Do Not Contact Me), NFU Mutual, Tiddington Road, Stratford-upon-Avon, Warwickshire CV37 7BJ or contact your local agency.

The National Farmers Union Mutual Insurance Society Limited (No 111982). Registered in England. Registered office: Tiddington Road, Stratford upon Avon, Warwickshire CV37 7BJ. Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. A member of the Association of British Insurers.

For security and training purposes, telephone calls may be recorded and monitored.

ART-POFRA-0620