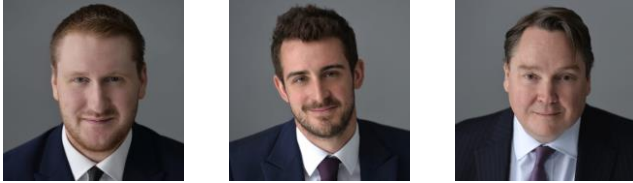




Fire Safety and Front Entrance Doors

Webinar snapshot

A	The topic	The Fire Safety (England) Regulations 2022 – which come into force on Monday 23 January 2023
B	The webinar	<p>The Fire Safety (England) Regulations 2022 introduce new duties for building owners and landlords which require an in-depth consideration of who will be responsible for front doors and what happens when landlords want to change them.</p> <p>The session aims to bring you up to date on the new duties and to provide an overview of the wider legal considerations at play.</p>
C	The webinar speakers	<p>To get in touch with the webinar speakers, please click on their images below.</p> 
D	The webinar slides and recording	<p>The slides used during the session can be found here.</p> <p>The recording can be viewed via our Webinar Hub.</p>
E	This note	<p>The content of this note</p> <ol style="list-style-type: none">1. is intended as an <i>aide-memoire</i> to our answers to the questions raised during the above webinar, which took place on 3 November 2022;2. is current as at 1 December 2022; and3. is not intended as legal advice and should not therefore be relied upon as the giving of legal advice. <p>In addition, Paragraph 11 of the Explanatory Note: The Fire Safety (England) Regulations 2022 reads:</p>



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		<p>“Supporting guidance, which will be issued under Article 50 of the Fire Safety Order, is being drafted to support implementation of the Instrument. It will be made available through gov.uk in autumn 2022 ahead of the commencement of these regulations on 23 January 2023. Hard copies of this guidance will be available from the Home Office on request.”</p> <p>We had anticipated that this official guidance would be published by the end of November. That did not turn out to be the case: with less than 8 weeks to go until the 2022 regulations come into force, we still await this important guidance.</p> <p>We will produce a briefing on the FSR guidance once it has been published.</p>
F	Abbreviations used in this note	<p>FED – The front entrance doors through which residents would need to have access in order to evacuate their premises in the case of an emergency in any building which contains two or more sets of domestic premises.</p> <p>FSA – Fire Safety Act 2021</p> <p>FSR – The Fire Safety (England) Regulations 2022</p> <p>Reg – A reference to a specific regulation within the FSR: there is a link below to the FSR</p> <p>RRO – Regulatory Reform (Fire Safety) Order 2005</p> <p>RP – The “responsible person” as referred to in, and upon whom duties are placed by, the FSR.</p>
G	The regulations	The Fire Safety (England) Regulations 2022
H	The factsheets	The Fire Safety (England) Regulations 2022: factsheets
I	Our related	<ul style="list-style-type: none"> • The Fire Safety Act 2021 • The Building Safety Act 2022



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	briefings	
J	Our related services	<ul style="list-style-type: none">• Housing Management & Property Litigation• Construction, Engineering & Procurement



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Follow Up Q&As

No.	Question	Answer
1	You mentioned factsheets and guidance. Are these not the same thing?	<p>In August, the government published a number of factsheets that provide background context and some basic information on the various parts of the FSR. The factsheets can be accessed via the link provided above. However, it is important to note that the factsheets do not constitute any official guidance.</p> <p>See also section 'E' above: we are awaiting publication of the official guidance.</p>
2	Please clarify the timescale that applies to the new regime	<p>The FSR comes into force on Monday 23 January 2023.</p> <p>The most onerous regulation for RPs to comply with will be Reg 10 which, in relation to residential buildings (comprising “two or more sets of domestic premises”) above 11 metres in height, requires the RP</p> <ul style="list-style-type: none">(a) to use best endeavours to undertake checks of fire doors at the entrances of individual flats at least every 12 months, and keep a record of steps it took to gain access where access was not granted; and(b) to undertake checks of fire doors in communal areas at least every 3 months. <p>Therefore, in terms of timing, compliance with the duty to check doors in communal areas will need to be achieved by Friday 21 April 2023 (23 April next year is a Sunday) and compliance with the duty to check front entrance doors will need to be achieved</p>



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Follow Up Q&As

No.	Question	Answer
		<p>by Tuesday 23 January 2024.</p> <p>It should be noted that these dates are the initial dates by when compliance needs to be achieved and thereafter the duties are ongoing continuing duties.</p>
3	In the webinar, you mentioned three height regimes: what rules apply to buildings less than 11m in height?	<p>Regulation 9 concerns the information RPs must give to residents.</p> <p>In any building containing at least two sets of domestic premises and common parts through which the residents of those premises would evacuate the building in the event of an emergency, the RP must display fire safety instructions “in a conspicuous part” of the building and “in a comprehensible form that the residents can be reasonably expected to understand”.</p> <p>Reg 9 sets out what should be in that information. The RP must provide residents with this information when they move into a multi-occupied residential building (new residents receiving the information “as soon as reasonably practicable after that resident moves into the premises”) and then on an annual basis. This information must first be provided no later than by 23 January 2024.</p> <p>The information to be given to residents should cover the importance of keeping doors closed, that doors and self-closing devices must not be tampered with and any faults or damage to doors need to be reported immediately.</p>
4	How is the height of a building measured? Is it from external ground	Regulation 3(2) makes reference to Appendix D to Approved Document B (note amendments made to



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Follow Up Q&As

No.	Question	Answer
	level to the ridge height of the building or to the finished top floor height?	AD B take effect on 1 December 2022). Appendix D deals with Methods of Measurement. Diagrams D4 (Height of building) and D6 (Height of top storey in building) are useful: the height of the top storey is measured from the upper floor surface of top floor to the ground level on the lowest side of building; the height of the top storey excludes roof-top plant areas and any top storeys consisting exclusively of plant rooms.
5	Which is the regulation that deals with fire doors?	Regulation 10: see answer given to Q2 above
6	Will you be talking about the communal door inspections and what form they should take?	See the attached slides above: we also covered the obligation to make quarterly checks as set out in the FSR. We will also produce a briefing once the official FSR guidance is published.
7	If the fire door needs to be replaced for fire safety reasons, is this not legislative change and, therefore, supersede the lease?	It is important to look at the terms of the lease itself as this remains the key document. Other changes do not amend the provisions in the lease for recovery of costs.
8	In relation to cluster accommodation – which contain a number of rooms with each having its own lock and occupied under individual agreements – would the front door be the front door to the flat or the door to each tenant’s room.	In our view, as we are talking about the front door of each individual domestic premises, in a case such as this, each room is an individual premises (with individual occupation rights) and so has its own front door to be checked.
9	Is it possible to clarify whether a full fire door survey forms part of a standard FRA? We are sometimes told that a standard	The Fire Protection Association is the UK’s leading fire safety organisation. The website contains guidance on fire risk assessments (FRAs). You should obtain technical advice.



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Follow Up Q&As

No.	Question	Answer
	<p>FRA must include a full fire door assessment.</p> <p>Our experience is that the FRA report would highlight the need to carry out full fire door assessment as a corrective action.</p>	<p>Under the RRO, it is the responsibility of the RP to carry out a suitable and sufficient FRA. The FSA extended the remit of the RRO to expressly include FEDs. The Regs place an additional duty on RPs to inspect FEDs annually.</p> <p>The nature of the FRA carried out will also depend on the history and characteristics of each building.</p>
10	<p>Would Reg 10(7) require a door closure to be fitted to a front door where it never had one?</p>	<p>The answer to Q2 above sets out the requirements of Reg 10 (4) and (6) in relation to the necessary checks. Reg 10 (7) states that the checks required by paragraphs (4) and (6) must include ensuring that the self-closing devices for the doors are working.</p> <p>Once in force, the FSR will need to be read alongside other applicable legislation. The FSA came into force in May 2022. It expands the scope of the RRO to apply to the structure, external walls (including cladding and balconies) and individual flat entrance doors between domestic premises and the common parts of a multi-occupied residential building.</p> <p>The RRO therefore applies to communal areas in existing HMOs, blocks of flats and maisonettes. In particular, Article 17 of the RRO requires fire doors to be "subject to a suitable system of maintenance and are maintained in an efficient state, in efficient working order and in good repair".</p> <p>In addition, Factsheet: Fire doors (Regulation 10) makes explicit reference to Recommendation 33.30 of The Grenfell Tower Inquiry: Phase 1 Report (October 2019) that those who have responsibility</p>



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Follow Up Q&As

No.	Question	Answer
		<p>for the condition of the entrance doors to individual flats in high-rise residential buildings (with unsafe cladding) be required by law to ensure these doors comply with current standards.</p> <p>If you need to replace a FED, the new door should comply with the current building regulations, which provide guidance as to the minimum building standards to be achieved. They reference the relevant standards defining the test requirements and performance of the fire door assembly or fire door set. Part B – Volume 2 of the Building Regulations provides details of what a fire compliant door must consist of.</p>
11	<p>Are FEDs that are maintained by the leaseholder but managed by the RP a shared responsibility?</p> <p>Example: if a FED is missing a letterbox, it is the duty of the RP to inform the leaseholder who has a duty to replace/repair; otherwise, is it the duty of the RP?</p>	<p>The RP will be responsible for complying with the RRO in relation to the common parts, including the FEDs.</p> <p>If the RP identifies an issue with a FED which is demised to the leaseholder, the leaseholder will generally have the obligation to repair and maintain it and comply with the request of a RP to do so.</p>
12	<p>Would it still be an improvement if works were undertaken to ensure compliance with the statutory requirements at the time? If the landlord could recover the cost to comply with statutory requirements would that not be recoverable?</p>	<p>If some element of the FED had deteriorated below the as built standard, the works would constitute a repair. Otherwise, the works would likely be considered an improvement.</p>
13	<p>Does a FED inspection include inspection of the interface between the</p>	<p>Factsheet: Fire doors (Regulation 10) states that the minimum requirements concerning inspections of fire doors are for the responsible person to</p>



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Follow Up Q&As

No.	Question	Answer
	<p>frame and the surrounding structure?</p> <p>To put it another way, would a hole between the substrate and the frame be covered by the new Jan 23rd requirement?</p>	<p>undertake an inspection of the doors to identify any obvious damage or issues which include:</p> <ul style="list-style-type: none"> • if there has been any alterations or damage to a door’s glazing apertures or air transfer grille; • if there are any gaps around the door frame and that seals and hinges are fitted correctly; • that the door closer shuts the door • that the door closes correctly around the whole frame • that there is no visible damage (either deliberate or from wear and tear) to the door or door closer <p>If any damage or any issues are identified as a result of the inspections carried out, Factsheet: Fire doors (Regulation 10) states that it might be appropriate to undertake a more detailed check of the doors or self-closing devices in question. This could include engaging a specialist.</p>
14	In the event the leaseholders refuse to comply with their obligations under the lease to replace the FED, what enforcement actions are available?	The usual action should be taken for a breach of lease claim and this can include applying for an injunction.
15	For new leaseholders, can we amend the lease to include clauses in the lease to replace the flat door and charge the leaseholder?	Building owners and landlords will want to consider if the FED is within the demise to ensure they can take action and recover costs.



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Follow Up Q&As

No.	Question	Answer
16	<p>You mentioned that there is an implied covenant in RTB/RTA leases under the Housing Act 1985 that the landlord is responsible for maintaining the structure and exterior and that the doors are included in the definition of the structure/exterior.</p> <p>What does the legislation and case law say specifically about doors being included in the definition?</p>	<p>See paragraph 14(2)(a) of Part III of Schedule 6 to the Housing Act 1985 for the implied covenant.</p> <p>See Sheffield City Council v Hazel St Clare Oliver LRX/146/2007 as authority for the principle that doors/windows form part of structure in this context.</p>
17	<p>Does the government anticipate that landlords will seek full recovery of the additional cost to carry out inspections from customers?</p>	<p>The government has not stated either way. In our view, the ability to recover costs is a matter to be determined by the lease terms.</p>
18	<p>In relation to properties where leaseholders own the door and landlords the frame, are landlords able to renew the frame and force leaseholders to renew their doors? If so, what can be recharged and how?</p>	<p>In our experience, it is unusual for the demised frame to be separate from the door itself. You will need to review the specific clauses in the context of the lease and seek advice on that.</p>
19	<p>In relation to properties which do not have a fire-rated glazed door/ fire resistant glazing, are we able to consider the door to be in disrepair and require the door set to be renewed? If the leaseholder chooses to change the glazing to fire rated, would this change the door status from being in disrepair to an acceptable nominal fire door?</p>	<p>See the answers provided to Q10 and Q13 above.</p> <p>To the extent that a leaseholder elects to upgrade its FED to one that is fire rated and compliant with the applicable technical requirements, then the status of its FED will change and no longer be in disrepair.</p>
20	<p>In relation to properties where doorsets have had cables (such as alarms or</p>	<p>See the answer provided to Q10 and Q13 above.</p>



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Follow Up Q&As

No.	Question	Answer
	telecoms) installed through the door frame itself, would this be sufficient grounds for the doorset to be considered in disrepair?	<p>Part B – Volume 2 of the Building Regulations provide details of what a fire compliant door must consist of. The critical components include the fire door set (a complete unit consisting of door frame and door leaf), the door frame itself (which must have the same fire resistance as the door and fit as a compatible set with the door), intumescent seals (which expand in the event of a fire and seal the gap between the door and the frame, stopping the passage of fire) and smoke seals (which may be combined with, or are separate from, the intumescent seals and are located in the entire perimeter of the frame or door).</p> <p>Excessive gaps may prevent intumescent seals performing correctly in the event of a fire. All new compliant front doors are fitted with a combined intumescent and smoke seal.</p> <p>If any issues are identified following the Reg 10 inspections carried out, Factsheet: Fire doors (Regulation 10) states that it might be appropriate for a more detailed inspection to be carried out, which may involve appointing a specialist.</p>