

Building Safety Division

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Dear Sir or Madam,

Publication of BS 9991:2024 Fire safety in the design, management and use of residential buildings. Code of practice

This letter sets out the approach of the Building Safety Regulator (BSR) to BS9991:2024 in its role as a building control authority for higher-risk buildings (HRBs) in England.

Summary

BSR expect applicants to give clear reasons for adopting the approach taken and explain how the design achieves compliance with the Building Regulations. BSR will take into account the timing of the application and changes to guidance or standards during its development.

Designers will need to ensure a level of safety at least equivalent to that provided by Approved Document B taking into consideration any associated transitional arrangements.

In all case, the BSR will remain pragmatic when considering HRB building regulations applications.

Building control providers for other types of building are not bound by the approach of BSR and may set their own policies and processes when considering applications.

Introduction

BS 9991 is commonly used during the design of residential buildings, particularly high-rise residential buildings, as an alternative to following either statutory guidance or other available fire safety design approaches to demonstrate compliance with the functional requirements of the Building Regulations.

Following a number of updates to the statutory guidance, with regards to fire in England (Approved Document B) and equivalent in devolved administrations, the British Standards Institution decided to update the guidance in BS 9991. Following a development period a new version of BS 9991 was published in November 2024. Throughout the development of the new standard the BSR has been coordinating with the British Standards Institution.

Although it is not our normal practice to comment on the publication of third-party guidance, we understand the significance of this publication and potential uncertainty this may have created in the sector. This is why we are today reaching out to set out on the position of the BSR as part of its Building Control function. Please note that it is not the role of the BSR to comment on how other regulators must approach this new publication.

Building Regulations and Approved Documents

Since 1985 building work in England is regulated through mostly functional requirements as currently set out in schedule 1 of the Building Regulations 2010. These functional requirements are outcomes based and do not prescribe the way in which compliance should be achieved or evidenced. It is the responsibility of the person carrying out the building work to demonstrate that they are meeting the requirements of the building regulations.

Approved Documents are approved by the Secretary of State and give practical guidance on some common building situations about how to meet the requirements of the Building Regulations 2010 in England. Different Approved Documents give guidance on each of the technical parts of the regulations.

Anyone using the Approved Documents should have sufficient knowledge, experience and skills to understand the guidance and correctly apply it to the building work. This is important because simply following the guidance does not guarantee that the building work will comply with the requirements of the Building Regulations.

Sections 6 and 7 of the Building Act 1984 specify the legal status of the Approved Documents. The Act is clear that proof of compliance with the guidance provided in the Approved Document may be relied on as tending to demonstrate compliance with the regulations. Conversely failure to follow the guidance in the relevant Approved Document does not in itself render the person carrying out the works liable but not following the Approved Document shifts the burden of proof to demonstrate compliance and may be relied upon as tending to establish liability. Nothing in the Building Regulations or Approved Documents prevents the person carrying out the works from adopting higher standards or demonstrating compliance by other means.

Status of British Standards

Compliance with British Standards, for the purpose of the Building Regulations is voluntary with some notable exceptions. British Standards represent good practice produced by the industry. Often, for ease of use, the Approved Documents will refer to third party guidance including British Standards.

When references are made in Approved Document B to a British Standard these are largely made to a specific section or provision and should not to be seen as a wide-ranging endorsement of the standard or third-party guidance. This is for example the case for references to BS 9991 in Approved Document B where only specific sections of the standard are referred to, not the entirety of the guidance.

Compliance with a British Standard does not always itself confer immunity from legal obligations even if British Standards can provide useful sources of information which could be used to provide an alternative to the guidance provided in the Approved Document.

It should also be noted that all guidance, including Approved Documents and British Standards, requires regular updating; it can only ever cater for the knowledge and legislation which exist at the time it is published. Accordingly, the parts of BS 9991:2015 which continue to be specifically referenced in Approved Document B are those which, at the time of the latest revision to Approved Document B, continue to assist in demonstrating compliance with the functional requirements. Conversely, there are parts of BS 9991:2015 which would clearly now be unacceptable (e.g. it does not address the ban on combustible materials in building work to HRBs which came in to force later, in 2018).

BSR's approach to BS 9991: 2024

BSR in its role as the Building Control Authority for HRBs has been clear that applicants are expected to set out the approach they are taking to each element of the higher-risk building work. BSR expect the application to give clear reasons for adopting the approach taken and explain how and why the approach ensures compliance with the functional requirements.

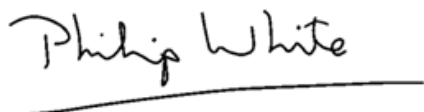
When reviewing applications for new Higher Risk Buildings the BSR will take into consideration the timing of the application and changes to guidance or standard that may have taken place while the design and application were being developed.

The BSR therefore expects that building work must be able to demonstrate, for common buildings (i.e. including “common” Higher Risk Buildings), a level of safety at least comparable to the one provided in the relevant version of Approved Document B (i.e. version applicable when the building regulation application is deposited). Through this approach designers will need to ensure that an at least equivalent level of safety is provided in new developments where there have been changes to the guidance, code or standard followed in the design, taking into consideration any relevant transitional arrangements of the statutory guidance. In all case, the BSR will remain pragmatic when considering HRB building regulations applications.

To be clear the BSR does not expect schemes sufficiently progressed in design, currently under construction or sufficiently progressed on site having to undertake a fundamental redesign on the basis of the updated publication and inclusion of additional measures.

I trust that this is clarifying our current position following the publication of BS 9991:2024. The BSR as a Building Control Authority will continue to work with the sector to ensure that where appropriate applications are not unduly delayed.

Yours sincerely,

A handwritten signature in black ink that reads 'Philip White'. The signature is written in a cursive style and is positioned above a solid black horizontal line.

PHILIP WHITE
Chief Inspector of Buildings & Director of Building Safety