

Communication Workers Union

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Fire Safety Unit
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Dear Sirs,

The Regulatory Reform (Fire Safety) Order 2005 - Open Public Consultation Call for Evidence:

This is the response of the Communication Workers Union to the Public Consultation, Call for Evidence on The Regulatory Reform (Fire safety) Order 2005. The CWU represents 200,000 Workers across the Communications Industry in the UK.

Introduction

Fire Safety is of the utmost importance in any building. Employers are responsible for ensuring that the workplace meets all required health and safety standards and it's crucial that the Legislation protects the workforce and that there is an Inspection and Enforcement regime that is adequately resourced and able to uphold the standards required therein ensuring that the working environment complies with all building regulations, to ensure the safety of all employees. Fire safety should always be a main concern, no matter what type of organisation it is.

Fire Protection is a core activity of the Fire and Rescue Services in order to ensure public safety by the reduction in the number of fires and fire related deaths and injuries. That primary focus will only achieve results via firm and effective Fire protection enforcement which is a major contributor to an improvement in public safety by ensuring that people, who have certain responsibilities in buildings where the Regulatory Reform (Fire Safety) Order applies, comply with the duties placed on them.

The Regulatory Reform (Fire Safety) Order 2005 is the main specific fire legislation in England and Wales, and the duty of the Fire and Rescue Service is to enforce all provisions of the Order. The RRFSO applies to all non-domestic premises, including the common parts of blocks of flats or houses in multiple occupation.

Independent Review of Building Regulation and Fire Safety (Hackitt Report)

The June 2017 Grenfell Tower fire caused the largest loss of life in a 'residential fire' in the UK in a century with 72 lives lost. It was avoidable and it should not have happened. The Hackitt Report warned that without changes to the regulatory system, covering buildings, another "catastrophic event" and tragedy like the Grenfell Tower fire cannot be ruled out. Author Judith Hackitt warned that unless we fix the system, we have no way of guaranteeing that there won't be another catastrophic event. The report recommended:-

- A tougher, easier to follow regulatory system.

- A Joint Competent Authority, comprising Local Authority Building Standards, Fire & Rescue Authorities and the Health & Safety Executive to manage safety risks,
- Specific requirements on 'duty-holders',
- Stronger powers of enforcement to provide a greater deterrent to cost-cutting over safety and
- Tougher penalties to also serve as an effective deterrent.

The CWU agrees with those Hackitt Report findings in regards to the weakness of the building safety system. During her review she was told by many experts quote "We always knew something like this would happen."

After a decade of relentless government de-regulation, with Safety Standards characterised as no more than 'burdensome red-tape', combined with the chronic under-funding of the enforcement agencies; the Health & Safety Executive, the Fire and Rescue Services, Local Authority building control services, compromising their capacity and effectiveness, along with the number of pro-active safety inspections massively slashed, the outcome was inevitable. Those wanting to take shortcuts were free to do so - with a catastrophic outcome.

Fire & Rescue Services Resources to carry out Fire Safety Inspections, Audits & Enforcement

The primary concern is to ensure that the Fire and Rescue service has adequate resources in order to carry out regular Inspections and Audits of premises and to enforce the legislation at all premises that they Inspect and audit, visiting as part of a programme of inspections, and responding to complaints from Trade Union Health and Safety Representatives, workers or members of the public etc. The CWU believes that the prolonged and significant under-funding of the Fire and Rescue Services, and of other enforcement agencies, is a significant non-legislative barrier to tackling enforcement under the Fire Safety Order.

We greatly value fire safety inspections and Audits but the decline in enforcement has seen 85,000 inspections in 2010-11, falling to fewer than 50,000 in 2017-18 – more than 40% down from the peak. In 2017 the FBU obtained data via an FoI from Fire and Rescue authorities across the UK detailing that between 2010 and 2017, the number of fire safety inspectors fell by 28% and that there had been a 40% fall in the number of inspectors over the previous twenty years, (1997-2017).

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) reported in 2018 that most Fire and Rescue Services didn't have enough qualified inspectors to meet the requirements set in their risk-based inspection programmes and most protection teams interviewed described themselves as "under-resourced". HMICFRS also found a significant reduction in the number of competent staff dedicated to fire safety protection. Of the 30 Services that provided HMICFRS with data, the number of inspectors fell from 820 in 2011 to 535 in 2018. [Source: HMICFRS, Fire and Rescue Service inspections 2018/19]. Whilst not noted in the consultation, the CWU believes that Fire and Rescue Services budgets should not continue to be cut but instead investment should be increased in the investigation teams in order to bolster the promotion and enforcement of the legislation. The CWU believes that the government should urgently examine the resources available to fire and rescue services to carry out Inspections and Audits as well as enforcement action and to respond to fires and other emergencies.

The CWU supports the proposals for stricter enforcement, including new offences, stiffer penalties and greater intervention, including proactive inspections.

Fire & Rescue Services Fire Fighting Resources

The Fire and Rescue Service has lost 11,000 frontline fire fighters since 2010, almost one-in-five of the fire fighting force across the UK as a result of government budgetary cuts. This inevitably has an impact on the provision of frontline services. These reductions are the result of over 30% of central funding cuts by the government 2010-2016 plus a further 20% of central funding cuts planned from 2016-2020, according to the local government settlement, which will further reduce capacity within the Fire & Rescue Service. These cuts should stop and new investment should be made to ensure that fire and rescue service can provide the service the public expects. The CWU believes that the government should address the capacity of fire and rescue services nationally to respond to fires and the broader implications of the adequacy and enforcement of relevant regulations.

The Responsible Person, Training Workers and 'Competency'

The Fire Safety Order Legislation requires a 'responsible person for the premises' to carry out a fire risk assessment that takes all persons, who may be lawfully on the premises, into account, this includes the employer, employees, self employed persons and charity or voluntary workers. It also requires the 'Responsible Person', to ensure that their employees are provided with adequate safety training both on entering the premises as a new employee and ongoing as and when new risks arise, and on a periodic basis where appropriate.

The CWU believes that some employers are often not doing enough to train workers and the legislation and its enforcement needs to focus on this area. There are also issues of how an employer's existing practices meet the challenge of temporary, agency and contract workers in a workplace which needs improvement.

The Fire Safety Order legislation does not do enough to enforce competency requirements. There is currently no "mandatory competence requirements" within the RRO [the Fire Safety Order] for those carrying out Fire Risk Assessments and no qualification or certification requirement to carry out a suitable and sufficient fire risk assessment and there is also insufficient requirements for regular updates to assessments. CWU supports the view that there should be independent certification legal requirements for the 'competent person' with duties placed on the company or organisation under the Fire Safety Order to meet such a requirement as at present the current requirements are vague and not enforceable.

The 'Competent Person' needs to understand the relevant fire safety legislation and guidance, have appropriate training, knowledge and experience in fire safety, understand fire development and the behaviour of people in fire, understand fire hazards, fire risks and relevant factors associated with occupants at special risk within buildings and have appropriate training and/or experience in carrying out fire risk assessments.

Fire authorities, HSE and other enforcement agencies have too few resources to drive compliance on these issues in the way or to the standard that they would wish, as a basis for an effective Building and Fire Safety System for workplaces.

Response Questions attached - additional to and cross-referencing the above.

Yours Sincerely

**Dave Joyce
CWU National Health Safety & Environment Officer**

Response Questions:

Q1.	Full name	Trades Union Congress
Q2.	Answering on behalf of an organisation	Dave Joyce National Health, Safety and Environment Officer
Q3.	Contact details:	CWU 150 The Broadway Wimbledon London SW19 1RX djoyce@cwu.org
Q4.	If your response is on behalf of a trade body or other representative group of individuals or organisations, please tick this box <input checked="" type="checkbox"/> and provide a brief description of its objectives and membership	The CWU represents 200,000 Workers in the Communications Industry.
Q5. The CWU is happy for our response to be published by central government.		

Introduction

Q6. Which of the next section(s) do you wish to use to respond?

X	Section 2: Fire Safety Order Scope and Objectives
X	Section 3: Issues specific to multi-occupied residential buildings
X	Section 4: General application – workplaces and other non-domestic premises
X	Section 5: Higher risk workplace buildings and fire safety

Section 2: Fire Safety Order - Scope and Objectives

Q7. To what extent do you agree or disagree with the scope of the Fire Safety Order?

X	See above
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Under-resourcing of the Fire and Rescue Service and the enforcement agencies plus deregulation must cease.

In your experience, does the Fire Safety Order meet the following objectives:

Q8. Enable a risk-based approach to fire safety, adaptable to any non-domestic premises?

X	No
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See above. Central government under-funding and lack of resources, lack of enforcement has prevented objectives being met.

9. Provide a proportionate legislative approach to ensuring fire safety for business and enforcing authorities?

X	No
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See above. Central government under-funding and lack of resources, lack of enforcement has prevented objectives being met. A so called 'proportionate legislative approach' has meant cuts in Inspections, cuts in prosecutions and a 'light-touch approach' with the cost in lives outcome now obvious to all!

Q10. Make those in control of regulated premises take responsibility for ongoing fire safety and protection measures – as Responsible Persons?

X	No
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See above - the 'responsible persons' have no statutory 'competency' requirements and there is a lack of proactive inspections, enforcement and penalties to improve compliance (as identified by the Hackitt Report). Adequate funding and resources need to firstly be restored followed by government abandoning its so called 'light-touch' approach instructions to enforcing agencies.

Q11. Support compliance and enforcement activity through guiding principles and guidance?

X	No
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See above. There has been a massive decline in enforcement over the last decade with a 40% cut in the number of fire safety inspections as well as HSE and Local Authority Safety Inspections and enforcement action.

Section 3: Issues Specific to Multi-OccUPIed Residential Buildings

Q12. What are your views on how we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?

Government must meet its duty as the first duty holder, including ensuring that the regulatory framework is exemplary, such as Building Regulations and Approved Documents. Respect and build upon the expertise of the existing enforcement agencies and recognise their distinct roles in law. Properly fund each of the existing enforcement agencies. Require joint working in statute between 'responsible person' and the accountable person. Properly fund and staff the Building Safety Regulator and the enforcement agencies. Make the Building Safety System publicly owned, publicly controlled, publicly accountable and publicly delivered. All inspectors should be employed by the public sector. An effective Building Safety System must listen to residents and Trade Union Health and Safety Representatives. End the promotion of a culture of deregulation and 'attack on red tape' as corrosive to the creation of a new safety culture, which will be central to the creation of a new Building Safety System. Design processes to maximise, capture and value constructive and expert input from trade unions, trade union health and safety reps, and workers, in all phases of design, construction and occupation, of buildings.

Q13. If both regimes are to continue to apply, how can they be improved to complement each other? In responses to Q12-13, you may wish to consider:

Maintain the expert role of each of the enforcement agencies and fully fund their work. Fire safety inspections must be made by members of the Fire and Rescue Services.

i) Can the Fire Safety Order and the Housing Health and Safety Rating System together adequately regulate fire risks in multi-occupied residential buildings?

Yes, if properly resourced.

ii) If the Fire Safety Order is disappled to the parts used in common in multi-occupied residential buildings, what would be the implications?

There's a need to apply effective regulation not disapply it.

iii) If the Fire Safety Order continues to regulate the parts used in common in multi-occupied residential buildings, how might the relevant definition in the Fire Safety Order be revised?

Explicitly include the exterior of the building.

Q14. How should we ensure the fire safety of a whole building which is in mixed use, where there are two or more persons responsible for respective parts of the building under different legislation?

Government should ensure that building owners/accountable person has a duty to cooperate with the responsible person, and with enforcement authorities. For those accountable persons/responsible persons who do not fulfil their legal duties, central government should fully fund Fire Authorities to drive compliance and enforce the Fire Safety Order, and likewise with other enforcement agencies and their core purposes.

Section 4: General Application - Workplaces and Other Non-Domestic Premises

Q15. Have you experienced any issue establishing who the Responsible Person(s) is(are) in the premises you occupy or regulate?

X	Yes
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Q16. Are the duties of the Responsible Person sufficient to ensure adequate fire safety measures are in place in the premises at all times?

X	No
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See above

Q17. Is the expectation that Responsible Persons self-evaluate whether they are able to meet their duties under the Fire Safety Order, or require assistance, the right approach?

X	No
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There is a lot of evidence to show that self-regulation as a practice has undermined the Building Safety System. The CWU supports clarity and certainty in the imposition of liability for fire and other duties on owners and senior managers.

Q18. Have you experienced or identified any issue regarding cooperation between Responsible Persons?

X	Yes
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See above

Q19. Have you experienced or identified any issue regarding coordination of fire safety measures between Responsible Persons?

In your experience, are the general fire risk assessment requirements listed below sufficient:

Q20. To carry out a suitable and sufficient fire risk assessment?

X	No
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See above

Q21. To review the fire risk assessment regularly, or when needed?

X	No
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“Regularly” is too vague. It should be at least annually,

Q22. To record the fire risk assessment?

X	Yes
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Q23. Are you aware of government guidance published online to support compliance with and enforcement of the Fire Safety Order?

X	Yes
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Guidance should be up to date.

Q24. Have you used any government guidance listed at Annex C?

Q25. Do you have any suggestion on how to improve the government guidance you use?

X	Yes
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Guidance should be up to date, issued by the public sector and informed by input from all relevant stakeholders, including residents and trade unions.

Q26. Have you identified any gaps in the available government guidance that could be addressed to better support compliance and enforcement activity?

X	Yes
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See above

Q27. Do you have practical information to share on fire risk assessment considerations and fire safety measures specific to relevant persons who are “people especially at risk” due to age, disability etc?

X	Yes
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The research data on vulnerable persons and elevated risk is clear. Some investment and sophistication are needed, working in parallel with the NHS and third sector, to raise awareness of vulnerable people to the risk of fire and to increasing their confidence and ability to report possible risks.

Q28. Are the employee fire safety training requirements sufficient?

X	No
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Clause 44 of the document notes that The Fire Safety Order requires the 'Responsible Person', to ensure that their employees are provided with adequate safety training both on entering the premises as a new employee and ongoing as and when new risks arise, and on a periodic basis where appropriate.

(Article 21 provisions for employee safety instruction and training, Annex B.)

Some employers are often not doing enough to train workers. There are also issues of how an employer's existing practice meets the challenge of contract workers in a workplace, agency workers in a workplace, self-employed workers in a workplace, and the impact of ESOL needs of some workers on their comprehension of advice, and consequent impact on their behaviours in cases of fire at work.

Fire authorities, HSE and other enforcement agencies have too few resources to drive compliance on this issue in the way or to the standard that they would wish, as a basis for an effective Building Safety System for workplaces.

Competency also needs to be addressed.

Q29. Are the general fire safety duties of employees at work sufficient?

X	Yes
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The problem is employers, compliance and competence.

Q30. Are the competent person requirements sufficient?

X	No
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People in safety critical roles should have qualifications that are designed, delivered and moderated independently by the public sector.

Q31. Do you have an example when you evaluated whether a person was competent to carry out duties under the Fire Safety Order?

X	No
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Q32. Are the general fire safety information sharing and management requirements sufficient?

X	No
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See above

Q33. Do you have an example of how fire safety information has been selected and communicated to employees and other relevant persons?

X	Yes
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Q34. Do you have an example of how fire safety information has been transferred between successive Responsible Persons?

X	No
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Q35. Does the Fire Safety Order provide an effective enforcement framework for different enforcing authorities to operate in relation to the premises that you occupy or regulate?

X	No
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See above

In your response, you may wish to consider:

i) How do enforcing authorities collaborate to ensure effective, coordinated enforcement activity?

Enforcement authorities already collaborate, but each has the shared problem of chronic underfunding.

ii) Are there any differences in the enforcement approach taken by enforcing authorities in relation to premises that you occupy or regulate?

Each enforcement agency has specialist skills and distinct core purposes.

iii) Does the Fire Safety Order provide a sufficient range of powers and tools to enable proportionate and effective enforcement action?

The powers available to fire safety inspectors need increasing.

iv) Is the current range of offences and sanctions sufficient to deter from and take effective action against any breaches of the Fire Safety Order?

No. There needs to be significant investment in the enforcement agencies to increase the number of proactive inspections, and enforcement and prosecutions.

v) Are there any non-legislative barriers to taking effective enforcement action under the Fire Safety Order?

Lack of resources for enforcement agencies. Government pushing the culture of de-regulation. The corrosive impact of privatisation on certainty of standards, uniformity of standards and accountability. Weak, unclear and out of date Building Regulations. Defective and dishonest data on product performance.

Q36. Is the scope of the Secretary of State's power to make regulations under Article 24 of the Fire Safety Order sufficient?

No

Q37. Are the requirements on Responsible Persons to ensure fire fighting facilities are maintained in a sufficient state, efficient working order and good repair, effective?

<input checked="" type="checkbox"/>	No
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Given the reported level of non-performance, no.

Q38. Are the additional Fire Safety Order requirements specific to the presence of dangerous substances sufficient?

<input checked="" type="checkbox"/>	No
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Review needed.

Q39. Are the additional Fire Safety Order requirements specific to the employment of young people on regulated premises sufficient?

<input checked="" type="checkbox"/>	No
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Q40. Do you have an example of other fire safety arrangements specific to employees deemed to be especially at risk in a workplace?

X	No
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Q41. Is it clear in what circumstances the Fire Safety Order applies to domestic premises being temporarily used for business, commercial or other non-domestic purposes?

X	No
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Section 5: Higher Risk Workplace Buildings and Fire Safety

Q42. What are the key factors that should determine whether a building type is a ‘higher risk workplace building’ in relation to fire safety when occupied? Please support your views.

General evidence of risk for building type and nature of use in terms of rate of fire, and rate of fire that causes fatality or the need for hospital treatment, plus specific evidence relating to the building, (for example it might be clad in ACM), plus the evidence from the previous fire inspection and from local fire safety inspectors. Any alerts from workers, trade union health and safety reps, users of the building should be an alert for inspections and potential classification as a higher risk building etc.

The issue of enforcement notices by one enforcement agency should trigger a heightened state of awareness in other enforcement agencies.

Q43. From the building types that have higher fire rates, please select below those that you consider to be ‘higher risk workplace buildings’ when occupied: (tick all that apply)

✓	Prisons
✓	Hospitals
✓	Supported/sheltered housing
✓	Residential educational buildings
✓	Hotels
✓	Care homes

Q44. Are there any particular buildings within these broad categories (see definitions used at para 60) that you are especially concerned about from a fire safety perspective?

X	Yes
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Non-residential buildings that are clad. Complex buildings that combine residential and commercial premises. Former office blocks converted to residential homes under permitted development rights. warehouse fire safety.

Q45. Are the provisions of the Fire Safety Order sufficient to ensure fire safety in ‘higher risk workplace buildings’?

X	No
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In the event the reforms set out in the Building a Safer Future consultation for the design and construction stage are applied to a set of ‘higher risk workplace buildings’:

Q46. Do you have any views on how the proposed new requirements at the design and construction stage - such as the safety case and golden thread – could link into the existing regime under the Fire Safety Order at the occupation stage?

✓	Yes
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The Fire and Rescue Service should have the status of a statutory consultee in the gateways and the planning permission process for higher risk buildings, to be covered by the new Building Safety Regulator. Enforcement agencies, including the Fire and Rescue Service should have the ability to hard stop the gateway process, planning permission, construction and the award of occupation rights to an accountable person.

In response to Q46, you may wish to consider the merits of a duty to co-operate and share information between the duty holder(s) at the design and construction stage, and the Responsible Person for occupation.

The CWU supports creation of a duty to co-operate and share information between the duty holders at the design and construction stage, and the Responsible Person for occupation.

Q47. Is there any aspect of the duties of the accountable person proposed in the Building a Safer Future consultation relevant to fire safety that should be considered for a Responsible Person in higher risk workplace buildings?

<input type="checkbox"/>	Yes
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Q48. Is there any aspect of the proposed safety case regime in relation to fire safety that should be considered for a Fire Risk Assessment in higher risk workplace buildings under the Fire Safety Order?

<input type="checkbox"/>	Yes
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CWU supports, as does the TUC and FBU, more stringent fire safety duties, such as a more prescriptive risk assessment process and a short and defined time interval between risk assessments.

Q49. Is there any aspect of the proposal for the ‘golden thread’ of information in the Building a Safer Future consultation that should be considered for information sharing and management in relation to the fire risk assessment in ‘higher risk workplace buildings’ under the Fire Safety Order?

<input checked="" type="checkbox"/>	Yes
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Whenever possible safety information should be shared and openly accessible, to promote good practice and enable scrutiny and accountability.

Q50. Is there any enforcement proposal set out in the Building a Safer Future consultation that should be considered to further encourage compliance with the Fire Safety Order in ‘higher risk workplace buildings’?

<input checked="" type="checkbox"/>	Yes
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We support the proposals for stricter enforcement, including new offences, stiffer penalties and greater intervention, including proactive inspections.

Q51. Is there any other aspect of the proposals set out in the Building a Safer Future consultation that should be considered for ‘higher risk workplace buildings’?

<input checked="" type="checkbox"/>	Yes - See above
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