LGA submission to the call for evidence for the independent review of building regulations and fire safety

13 October 2017

About the Local Government Association (LGA)

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

Introduction

The LGA welcomes the opportunity to submit evidence to the independent review of building regulations and fire safety. Councils across the country are clear that no one should have to live in fear about their safety, be that in the buildings they live in, work in or visit.

The tragedy at Grenfell Tower has clearly exposed a systemic failure of the building regulation system, which needs to be addressed urgently to ensure such an incident never happens again.

Whilst the primary focus since Grenfell has, understandably, been fire safety in high-rise towers, we urge the independent review to look more broadly at building regulation and fire safety issues that affect all buildings, to ensure there are robust procedures in place across the board. Furthermore, recommendations arising from the review should be given clear deadlines for implementation.

Whilst our response covers the specific questions in the call for evidence, it can be split broadly into two themes. Those looking at fire safety when buildings are being constructed and post-construction fire safety.

In relation to both themes we feel that there needs either to be a single point of responsibility or greater clarity over the responsibilities of those building and/or owning blocks and the regulators of construction and ongoing safety. All of these arrangements need to be clear to residents, to those responsible for construction at the sharp end and to those with day-to-day responsibility for managing buildings.

A summary of our proposals can be found at the end of this document.

Local Government Association

Submission

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Response to specific questions in the call for evidence

1 The overarching legal requirements

Q1 To what extent are the current building, housing and fire safety legislation and associated guidance clear and understood by those who need to follow them? In particular:
• What parts are clear and well understood by those who need to follow them? and, if appropriate
• Where specifically do you think there are gaps, inconsistencies and/or overlaps (including between different parts of the legislation and guidance)? What changes would be necessary to address these and what are the benefits of doing so?

The requirement under section B4 (1) of the Building Regulations 2010[1] relating to the spread of fire across the external walls of the building is perfectly clear and does not need to be revised. This specifies that '*The external walls shall adequately resist the spread of fire over the walls and from one building to another, having regards to the height, use and position of the building'*.

Approved Document B Volume 2

However, this is not the case with the Government's guidance Approved Document B (fire safety) volume 2[2]: buildings others than dwelling houses, which deals with fire safety in tall buildings and is unclear.

The lack of clarity in the guidance has been recognised at least since 2013 when the Coroner in the case of the 2009 Lakanal House deaths wrote in a Rule 43 letter to the Department of Communities and Local Government (DCLG) stating that "[Approved Document B] is a most difficult document to use" and recommended that the Department "provides clear guidance in relation to Regulation B4 of the Building Regulations, with particular regard to the spread of fire over the external envelope of the building".

The Coroner went on to recommend that the guidance "is expressed in words and adopts a format which are intelligible to the wide range of people and bodies engaged in construction, maintenance and refurbishment of buildings"

The concerns of the Coroner are supported by evidence from the Fire Sector Federation titled "Why does Approved Document B need to be reviewed?" The document cites findings from a survey of Fire Sector Federation and Construction Industry Council members suggesting that a large proportion of the members of both organisations have serious concerns as to the adequacy and clarity of Approved Document B. More than half of the CIC members responding to the survey are said to find Approved Document B difficult to use.

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[1] http://www.legislation.gov.uk/uksi/2010/2214/schedule/1/made

[2] https://www.gov.uk/government/publications/fire-safety-approved-document-b

In its response to the Coroners rule 43 letter DCLG stated that a new edition of the Approved Document would be produced in 2016/17. This did not happen.

Approved Document B is of no use if the individuals fixing cladding systems to buildings do not understand both the document, its purpose and its importance. It is clear that terms such as 'filler' (in paragraph 12.7) mean different things to lawyers than to builders. This is a serious failing in a document that the building industry is supposed to understand and apply. Approved Document B2 as a whole is arguably not fit for purpose in this respect. The revised version - and the definitions section in particular - should be subjected to a reality-check to ensure it is comprehensible to those working in the industry.

Our specific concerns with the guidance are listed here:

- The tone of the opening introductory paragraphs invites the reader to find alternative ways to those in the guidance with which to comply with section B4 (1) of the building regulations; it states that "there is no obligation to adopt any particular solution contained in an approved document if you prefer to meet the relevant requirement in some other way".[3] There is a risk that this leeway undermines the authority of the guidance and establishes a contestable space in which manufactures, builders, and regulators must operate

- There are both national and European classifications of non-combustible materials and materials of limited combustibility. Approved Document B Vol 2 rightly refers to both and states that "the national classifications do not automatically equate with the equivalent [European] classifications" and that products "cannot typically assume a European class unless they have been tested accordingly".[4] However, there is a lack of clarity as to when a national or European standard should apply. This is of particular importance and becomes increasingly confusing when the guidance is being read in conjunction with other documents such as Agrément Certificates

- In general it is important to note that the guidance can only be interpreted by further reference to a number of other complex documents including various British Standards and BR 135[5]

- Paragraphs 12.5 to 12.9 of Approved Document B Vol 2 provide the relevant guidance for external wall construction and external surfaces for blocks of flats that are 18 metres or taller. These

[3] AD B Vol 2 p5

[4] AD B Vol 2 Appendix A Tables 6 and 7

[5] BR 135

paragraphs set up two separate routes to compliance and are problematic:

- Whilst paragraphs 12.6 and 12.7 may appear to set absolute requirements for 18m plus buildings if read alone, that is not the case because paragraph 12.5 offers an alternative route to compliance stating that “External walls should either meet the guidance given in paragraphs 12.6 to 12.9 or meet the performance criteria given in the BRE Report Fire Performance of external insulation for walls of multi storey buildings (BR 135)”

- In doing so the guidance appears to set up no absolute requirement for the external surfaces of walls to meet the provisions of paragraph 12.6 and Diagram 40 or for insulation materials in cladding systems used on 18m plus buildings to be of “limited combustibility” as specified in paragraph 12.7. The guidance allows not just for two separate routes to compliance but for two completely separate standards. The continuation of such an approach must now be questionable

- The confusion in these important paragraphs is compounded further by a tension between the requirements of 12.6 and Diagram 40 (“Provisions for external surfaces or walls”), which appear to set a B threshold for external wall surfaces, and the requirements of 12.7 which set an A2 threshold for any external cladding.

A practice has built up in the industry whereby a *third* option to achieve compliance is available. [6] This approach, allows that if no actual fire test data exists for a particular system, a desk-top study report by a suitable independent UKAS accredited testing body (BRE, Chiltern Fire or Warrington Fire) can be submitted instead to building control stating whether, in their opinion, BR 135 criteria would be met with the proposed system. These reports are a matter of judgement and cannot be verified by building control. Subsequent to the Grenfell Tower fire a number of cladding systems which have been used on tall buildings have proved not to meet the required standard of non-combustibility. This raises serious questions about the appropriateness of a route to compliance which does not depend on an actual fire test.

These concerns suggest that the efficacy of the approach to guidance, including allowing various routes to compliance and dual standards must be questioned and that a substantial rewrite of Approved Document B is required. The rewrite should ensure that the updated document is comprehensible to those industry professionals that use it and ultimately delivers the key outcomes it seeks to address, which is fire safety.

As a minimum:

[6] BCA Technical Guidance Note 18

- Paragraph 12.7 should be rewritten to say that all the material used in external cladding systems should be of limited combustibility (this would still allow products that do not meet this standard to be used where a system has passed BS 8414). The existing references to the materials (e.g. filler) involved allows room for confusion although the reference to gaskets and sealants in parenthesis may need to be retained

- Approved Document B should also make it clear that a fire-engineering approach cannot override the requirement of section B4 (1) of the Building Regulations and that desktop studies cannot substitute for test BS 8414.

BR 135 and BS 8414 and the transparency of test results

BR 135 specifies criteria to assess whether an entire cladding system meets pass/fail thresholds for external and internal fire spread when tested using the method set out in BS 8414. BS 8414 [7]is a British Standard describing test methods to assess fire safety of cladding applied to the external face of a building.

The details of the BS 8414 test need to be reviewed and clear guidance provided on how far a cladding system may in practice differ from the test rig used if it is to rely on an existing test result. This provision is required to avoid repeating the test where a system is identical in key respects to those already tested (for example the same materials and no significant difference to the layout). It should not be capable of providing the same effective loophole that desk top studies have in practice become.

The BS8414 tests undertaken by independent UKAS accredited testing bodies (BRE, Chiltern Fire or Warrington Fire) are a commercial activity. As such the results are treated as commercially confidential and are not available publically without the approval of the manufacturer that has submitted a product or system for testing. This has proved frustrating as councils and other landlords and building owners have grappled with the challenge of assessing the cladding on their buildings, particularly if the cladding systems are not one of those that the Government has recently tested.

Following the Grenfell Tower fire, it is now unsustainable that test results, particularly those that fail under BS 8414, can be treated as commercially confidential. There should be a duty on accredited testing bodies to make this information publicly available. It should also be the case that the granting of an Agrément Certificate is dependent on the publication of *all* fire safety test results.

The test relating to BS 8414 is based on the assumption that systems are properly fitted. Evidence suggests, for example around wind loading, that this cannot be relied upon. It would be helpful if the BS8414 testing regime were able to provide information on how sensitive the tests are to commonly found mistakes in building envelopes.

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[7] BS 8414

Consideration should also be given as to whether retrospective installation of BS8414 tested cladding systems onto older buildings (which may have been built under broader construction tolerances than might be allowed today), could impact on the integrity and fire safety of that system.
The details of the BS 8414 test are not widely known and are not publicly available without the purchase of a BRE publication. These details need to be made more widely available in order to aid understanding of why the test matters.

Wind loading

A separate and distinct issue has risen in respect of cladding on tower blocks. Following investigations of cladding that fell from buildings in Glasgow, it was found that some cladding systems may be designed and installed in such a way that they could fail in strong winds. It is our understanding that a survey by the British Board of Agrément has shown that wind loading calculations for cladding systems are not properly understood by the industry. Approved Document B needs to refer to the need for accurate wind loading calculations.

Energy performance and Approved Document L

The Buildings Energy Performance Directive1 (EPBD) was approved on 16 December 2002 and brought into force on 4 January 2003. EPBD required Member States to take measures to ensure that minimum energy performance requirements for buildings were set. Building Regulations were amended in 2006 and a new set of Approved Documents L were introduced. Targets for heat loss, a U value, apply for new build and for renovations. For example Table AI of AD L1 B sets a U value of 0.30 for the renewal of cladding, or applying cladding for the first time to an external wall. This has implications for the type of insulation and rain screen used in a cladding system. We need to ensure that in complying with Approved Document L there is an appropriate regard for fire safety. Approved Document L may need amending to ensure that requirements in respect of energy efficiency do not obscure requirements elsewhere in respect of fire safety.

The possibility that changes of use under permitted development that see buildings over 18m transferred from commercial, in particular office use to residential, may add an additional gap in the regulatory framework, needs to be properly investigated.

The points made above require a wide-ranging review of building regulation guidance. However, in our view the changes which can be made quickly should not be delayed pending the outcome of a wider review. In particular the guidance around cladding systems must be revised quickly so that it can inform the recladding that needs to be carried out now.

Post construction safety and the Fire Safety Order

Following the Lakanal House inquest, the Coroner wrote to the Department for Communities and Local Government in a Rule 43 letter recommending that the Government give clear guidance on:

- The definition of ‘common parts’ of buildings containing multiple premises

- Inspection of a maisonette or flat which has been modified internally to determine whether compartmentation has been breached

- Inspection of a sample of flats or maisonettes to identify possible breaches of the compartment.[8]

Clear guidance is still outstanding and these uncertainties remain.

In addition there appears to be uncertainty over:

- Whether cladding systems are ‘common parts’ of buildings for the purpose of the Regulatory Reform (Fire Safety) order 2005 (the FSO)

- Whether cladding issues should be inspected and enforced under the FSO by fire and rescue authorities or the Housing Act

- Whether cladding which would not pass building regulations is a category one hazard under the health and safety rating system under the Housing Act.

In general there is insufficient clarity on the relationship between the Housing Act 2004 and the Fire Safety Order and the division of responsibilities and powers between councils under the former and fire and rescue services under the latter. This could be solved by a single body (either the local authority or the fire and rescue service) being given exclusive responsibility for fire safety issues in multi-storey blocks. Or, alternatively, clarifying the respective roles of councils and fire and rescue services may prove equally effective. To avoid any perceived conflict of interest, councils should not be put in a position where they are both the proprietor/landlord of a building and the regulator. In these instances partnership with fire and rescue services will be crucial.

Either way it is essential that there is a collaborative partnership approach between all agencies involved in ensuring the safety of residents, albeit relative responsibilities need to be clarified and formalised. Our concern is to see the issue addressed and the solution properly funded, rather than to ensure it is addressed in a particular manner, although we intend to consider that issue further and seek our members’ views on it. For the sake of concision this point is not repeated below where reference is made to a single enforcement body.

Building Regulations Advisory Committee (BRAC)

The Building Regulations Advisory Committee (BRAC)[9] is an advisory non-departmental public body, sponsored by DCLG. The Committee advises on

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[8] https://www.lambeth.gov.uk/sites/default/files/ec-letter-to-DCLG-pursuant-to-rule43-28March2013.pdf

[9] Building Regulations Advisory Committee (BRAC)

making building regulations and setting standards for the design and construction of buildings. Given the previous Government's drive to "reduce the regulatory burden on the housing industry"[10], and "make it easier and cheaper to build homes"[11], consideration should be given to the impact that this deregulation has had on the overall safety and quality of new builds over successive Governments. For example, whether the drive to reduce costs has led to a race to the bottom in terms of building standards, rather than the most appropriate level of regulation. There should also be a review on the fitness for purpose of BRAC. This should consider, in particular, the quality and frequency of BRAC's advice to Government, the degree to which its conclusions are followed up by the Government and the balance of interests on the committee.

Local Government Association guidance on fire safety in purpose-built blocks of flats

The LGA led work commissioned by Government to develop sector-led guidance[12] on fire safety in purpose-built blocks of flats, which was written by experts in the field of fire safety and was published in July 2011. It was developed after landlords voiced a number of concerns about how best they can deliver an appropriate level of fire safety in purpose-built blocks of flats. The LGA is keen to work with the Government and other partners to consider the implications of any recommendations resulting from the Hackitt review, the Grenfell Tower public inquiry and inquest to make any revisions to the guidance as appropriate.

2 Roles & Responsibilities

Q2 *Are the roles, responsibilities & accountabilities of different individuals (in relation to adhering to fire safety requirements or assessing compliance) at each key stage of the building process clear, effective and timely? In particular:*
• *Where are responsibilities clear, effective and timely and well understood by those who need to adhere to them/assess them? and, if appropriate*
• *Where specifically do you think the regime is not effective?*
• *What changes would be necessary to address these and what are the benefits of doing so?*

The body of legislation is only one aspect in considering the safety of buildings. The practice of the construction sector and professionals within it are equally important. There is evidence to suggest that the chain of different suppliers and contractors involved in the construction or refurbishment of a building allows too great a risk that value engineering and product substitution can happen after building control plans have been approved and even during the construction phase.

It is necessary to reduce this risk and in our view, the construction of safe buildings will require that:

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[10] Ministerial Statement 13 March 2014

[11] DCLG press release

[12] LGA guidance on fire safety in purpose-built blocks of flats – July 2011

- Responsibility for ensuring that a building is constructed in accordance with the building regulations and that unsuitable products are not introduced at a late stage in the construction process needs to lie with a specific individual who can work across the supply chain, probably supported by a more rigorous inspection system

- This could include creating a formal stage when plans and specific product details have to be verified by building control. They then must be delivered according to the verified details with inspections scheduled to monitor key phases and tasks

- Workers engaged in front line tasks understand what they can and cannot do to comply with the regulations. It is impractical to imagine that it will ever be possible to ensure cladding is properly attached to a building and cavity barriers fully functional, through inspection alone. This could be addressed through an accredited installer scheme for cladding industry employees

- Anyone undertaking work in a block that could breach the principle of compartmentation understands the need to avoid doing so. While this can be addressed through training of utility installers etc, all such work needs to be notifiable to building control (and also to the single body referred to in answer to Question1 above, if this approach were to be adopted) as well as to the responsible person under the Fire Safety Order.

We are not confident that the current regulatory framework ensures any of the above outcomes.

Building control under market conditions

Building Control Bodies (BCBs) are responsible for checking building works to provide verification that it complies with national building regulations. Building Control Bodies may be either the building control department within a local authority or an Approved Inspector. The person carrying out building work can decide whether to use the local authority or an Approved Inspector.

The current competitive system of building control, operating within indeterminate building regulations' guidance, hinders an effective inspection regime. A competitive market for building control sign-off creates pressure to lower costs and particularly when guidance is unclear, can lead to lower standards, including fewer less rigorous inspections.

The ability of Approved Inspectors and council building control services to win business decreases the more expensive their service is. This deters inspectors from conducting more than the minimum number of inspections or from making those inspections more rigorous than is absolutely necessary. There should be absolute clarity on the required inspections and the standard of those inspections for both local authority building control inspectors and Approved Inspectors to ensure a level playing field –

this could drive up the effectiveness and quality of inspection regimes across this competitive market. This should apply to all new building work, including new builds, as well as conversions and refurbishments of existing buildings for the avoidance of doubt.

It appears that no power exists to compel Approved Inspectors to provide anyone other than their client with copies of approvals or the reasoning behind them. This lack of transparency should be rectified.

Q3 Does the current system place a clear <u>over-arching</u> responsibility on named parties for maintaining/ ensuring fire safety requirements are met in a high-rise multi occupancy building? Where could this be made clearer? What would be the benefits of doing so?

As our answer to Q2 above indicates, we do not feel the current system adequately places a clear over-arching responsibility on named parties for ensuring fire safety requirements are met in a high-rise multi occupancy building in respect of construction.

Post construction we think it is clear that currently responsibilities for ensuring fire safety requirements are met lie with the building owner for common parts and the occupier for individual dwellings. We think this distinction needs review, because fire does not recognise these administrative boundaries.

In particular, while tenancy agreements and leases can require occupiers not to breach the principle of compartmentation, there is evidence to suggest that this is not well understood by occupiers (for example front fire doors and fire glass are often replaced with uncertified products), nor is internal work in a dwelling likely to be inspected or to come to light.

The FSO's requirement for a responsible person to produce a fire risk assessment (FRA) only applies to common parts and does not require sufficient expertise to be brought to bear on producing the FRA.

Building owners should have responsibility for ensuring that the FRA is carried out by a suitably qualified person and covers all parts of the building to ensure that tenants and leaseholders do not breach compartmentation. Clear guidance on such inspections would be required, as recommended by the Coroner in the Lakanal House inquest.

As suggested above, one solution would be for a single enforcement body to be responsible for inspecting all areas of high rise blocks against this FRA.

In terms of implementing any necessary fire safety measures as a result of an FRA, it is worth considering what powers are, or should be, available to landowners, councils and fire and rescue services to ensure action is taken swiftly and that costs can be recouped. This is of particular concern in mixed tenure buildings where leaseholders and tenants occupy properties but may fail to agree on fire safety measures.

3 Competencies of key players

Q4 What evidence is there that those with responsibility for:
• Demonstrating compliance (with building regulations, housing & fire safety requirements) at various stages in the life cycle of a building;
• Assessing compliance with those requirements

are appropriately trained and accredited and are adequately resourced to perform their role effectively (including whether there are enough qualified professionals in each key area)? If gaps exist how can they be addressed and what would be the benefits of doing so?

Building Control

There is evidence to suggest that there are significant recruitment and retention issues in local authority building control. There is particular concern about the loss of qualified and experienced building control surveyors to the private sector, as well as through retirement. The local government sector would like to work with Government to consider opportunities to increase capacity and address recruitment and retention issues to ensure that local authorities can continue to deliver effective building control services.

In terms of specific competencies, these should be closely matched to the type and complexity of work being undertaken. This is equally relevant to building control, fire risk assessors, designers or contractors. In the case of local authority building control there are many opportunities for further training. This includes courses run by other local government membership organisations such as Local Authority Building Control (LABC), which includes a portfolio of Continued Professional Development (CPD) courses. The Government should work with the building control sector to assess whether there is merit in having a specific competency set or minimum qualification level required to deal with building control issues relating to high-rise and/or high complexity buildings. It is important that any competency expectations are the same for both local authority building control inspectors and Approved Inspectors to ensure transparency and a level playing field within the competitive market in which they operate.

Local authority building control services have quality management systems including certification under ISO 90001, which means that they are continuously undergoing the scrutiny of this third party certification body. The vast majority of these services supply information to a performance sub-committee of the Building Regulations Advisory Committee (the building control performance standards advisory group (BCPSAG)). Through this mechanism services are able to monitor compliance with relevant competencies. The information in these audits provide the basis for benchmarking and a sector led approach to improvement.

The LGA champions sector-led improvement across local government. In our view it is the most effective way to secure sustained improvement. Sector-led improvement is based on the underlying principles that local authorities are:

- Responsible for their own performance
- Accountable locally, not nationally
- Operating with a sense of collective responsibility for the performance of the sector as a whole, and
- Drawing on the LGA to provide tools and support.

There are opportunities to extend the existing sector-led offer to local authority building control, but this is not costless and would need to be fully funded.

Fire Risk Assessment

There is currently no prescribed threshold of expertise required for the conduct of a fire risk assessment. This may be acceptable in low rise blocks, but in high rise blocks, or buildings housing vulnerable people, fire risk assessments should be carried out by accredited experts (for example through UKAS) holding a nationally agreed minimum level of qualification. This should cover the entire structure including individual dwellings, irrespective of ownership. This may require regulatory change to ensure that fire risk assessors can access individual dwellings.

There should be a requirement for fire risk assessments on high rise blocks or other high risk/high complexity buildings to be logged in the same way as 'Competent Persons' Scheme notifications are held by local authorities and subject to fixed interval regular review.

4 Enforcement & Sanctions

Q5 Is the current checking and inspection regime adequately backed up through enforcement and sanctions? In particular
• Where does the regime already adequately drive compliance or ensure remedial action is always taken in a timely manner where needed?
• Where does the system fail to do so? Are changes required to address this and what would be the benefits of doing so?

It is too early to be certain, but we hope that the consequences for a building owner of discovering dangerous cladding on their building and having to undergo interim and long-term remediation work are likely to be expensive enough to provide a deterrent to non-compliance in themselves. Therefore, while the system of construction regulation has obviously failed on a large scale, the issue here is not one of enforcement and sanctions, but of oversight, including inspection (and the issues raised previously including the effectiveness of guidance).

That said, there are elements of the enforcement regime that should be reformed. The time limit on enforcement action in respect of breaches of building regulation should be removed, particularly where those breaches pose a serious risk to public safety, as is the case in the current cladding crisis (we are not arguing here for retrospective prosecution where a building complied with regulations in force at the time). Currently local

authorities have two formal enforcement powers where building work undertaken is not in compliance with the building regulations:

- First, the local authority may prosecute a person who has carried out building work which contravenes the Building Regulations in the Magistrates' County, resulting in an unlimited fine (sections 35 and 35A of the Building Act 1984). Prosecution is only possible up to two years after completion of the work. Action will usually be taken against the person carrying out the work, for example the builder, main contractor or installer

- Secondly, the local authority can alternatively, or in addition, serve an enforcement notice on the building owner requiring alteration or removal of work where it contravenes the Building Regulations (section 36 of the 1984 Act). The local authority has the power to undertake the work itself and recover costs from the owner, in cases where the owner does not comply with the notice. A section 36 enforcement notice cannot be served on a building owner following the expiration of 12 months from the date the offending building work is completed. Where building work has been carried out in accordance with a full plans building control application which a local authority approved or failed to reject, the local authority cannot take enforcement action under section 36.

Post construction fire safety in high rise blocks should be subjected to regular inspections. One solution would be for this to be undertaken by a single body responsible for the entire block, both dwellings and common parts (including the external envelope), to whom any work relevant to compartmentation or other fire safety issues should be notifiable.

Building owners or managers should be required to ensure that not only do they have a fire risk assessment conducted by someone with the necessary expertise but that this assessment is publicly available, that it is supplied to residents and that residents are made aware of how to contact the enforcement body directly should they have concerns. There should be a statutory time period in which the assessment should be made public, but should allow sufficient time for landlords to plan how to rectify any issues of concern identified through a fire risk assessment.

There is currently some uncertainty over whether councils (using the Housing Act) or fire and rescue services (using the FSO) have the power to demand that building owners test cladding to check that it poses no fire safety risk, or to insist upon the replacement of dangerous cladding.

The Government should provide a clear overview of the legal powers under which councils and/or fire and rescue services are able to act should enforcement action be required. For example through the Housing Act 2004, and the regulations and Housing Health and Safety Rating System made under it and/or the FSO.

If the above powers do exist, the ultimate sanction under them is to carry out work and then charge the building owner for doing so. It may be that

where cladding needs replacing building owners will not only refuse to do so, but write-off assets rather than pay the cost of re-cladding, leaving councils with the bill.

Therefore, in cases where owners cannot or will not carry out work to address a significant safety issue in a block (which might be defined as one requiring evacuation until it can be addressed), councils (who would otherwise be required to meet the housing needs of those evacuated) should be given control of the block and the power to act as freehold owners in order at least to meet the housing needs of residents and to recoup any costs incurred. Arguably this arrangement should continue beyond that point in order to provide a punitive sanction against building owners who have not borne the responsibility. If such arrangements were made, the property rights of leaseholders should of course be protected. Indeed, it is our view that these arrangements are necessary in part in order to protect those rights.

5 Tenants' & Residents' Voice in the current system

Q6 Is there an effective means for tenants and other residents to raise concerns about the fire safety of their buildings and to receive feedback? Where might changes be required to ensure tenants'/residents' voices on fire safety can be heard in the future?

Residents and tenant engagement should be at the heart of everything that public organisations do. This should include involving residents and tenants in formulating policy, developing services and providing views and feedback once implemented.

Insight and understanding local communities is key to developing strong engagement. The LGA's New Conversations[13] guide sets out the principles of good engagement and could act as a starting point for further developing this work.

Best practice around what good community engagement should be can be developed further and the LGA would be pleased to play a leading role in this, following work we have already done in this area.

As set out in answer to the previous question, it is essential that owners are proactively required to share fire risk assessment with residents and that residents are empowered to raise any concerns about fire safety directly to the enforcing authority.

6 Quality Assurance and Testing of Materials

Q7 Does the way building components are safety checked, certified and marketed in relation to building regulations requirements need to change? In particular:
• Where is the system sufficiently robust and reliable in maximising fire safety and, if appropriate

[13] https://www.local.gov.uk/new-conversations-lga-guide-engagement

• *Where specifically do you think there are weaknesses/gaps? What changes would be necessary to address these and what would be the benefits of doing so?*

There is evidence to suggest that product naming for building components can sometimes be ambiguous, and there is no convention for product naming and marking for many products. All building components that have to be assessed in fire safety decision-making should carry visible product marking that relates to test certificates which is clear when goods are delivered to construction sites. Alongside the requirement outlined earlier for a new process whereby plans and specific product details have to be verified by building control, this would ensure that product substitutions did not take place on site, which might compromise fire safety.

Test certification documents for building components can be lengthy and complex to understand, therefore requiring careful use. Test certification should be presented in a standard template containing the essential facts and figures. For example, products which can never be safely used above 18m, such as polyethylene (PE) grade Aluminium Cladding Material, need to be clearly marked to that effect. These should be publicly available on a trusted website, for example, .gov.uk. This will enable users, including building control departments to make an informed decision about the appropriateness of using that component in a construction product, and to easily and effectively determine its compliance with building regulations.

Building product manufacturers should also be required to clearly state whether products may present other hazard risks to building occupants and/or the area surrounding the building in the event of fire, for example release of toxic gases.

7 Differentiation within the current Regulatory System

Q8 What would be the advantages/disadvantages of creating a greater degree of differentiation in the regulatory system between high-rise multi occupancy residential buildings and other less complex types of residential/non-residential buildings?

As outlined previously, all those involved at the various stages in the life cycle of a building, should be appropriately trained and accredited to reflect the complexity of the work that they are involved in. The increased complexities arising from high-rise multi occupancy residential buildings – not least in the design, construction as well as fire safety implications for residents – suggests that there is a strong case for a higher level of training and accreditation for those involved in activities relating to these types of buildings. It is vital that where any differentiation is introduced in the regulatory system, that the Government provides absolute clarity on how the new system works and the competency levels required, to avoid any ambiguity.

While there may be a good case for exempting low-rise residential accommodation from some of the requirements imposed on high rise, there is also a case for more rigorous conditions imposed on buildings with vulnerable occupants (e.g. student accommodation, sheltered accommodation, care homes, health buildings etc.)

8 International Comparisons and Other Sectors

Q9 What examples exist from outside England of good practice in regulatory systems that aim to ensure fire safety in similar buildings? What aspects should be specifically considered and why?

Q10 What examples of good practice from regulatory regimes in other industries/sectors that are dependent on high quality safety environments are there that we could learn from? What key lessons are there for enhancing fire safety?

No response.

9 Summary of proposals/suggestions

Construction Stage

- The time limit on enforcing building regulations should be removed
- Approved Document B needs revising as detailed in our response to Q1
- Desk-top studies and fire engineering approaches are not acceptable routes to compliance with building regulation for cladding
- One individual needs to be legally responsible for ensuring that building regulations are complied with during the construction, refurbishment or cladding of a building from design to completion
- As a minimum the competitive market in building control needs to be reformed to ensure that fire safety is not a basis for competition and there needs to be a more rigorous prescription of the number of inspections, the stages at which they take place and their content
- The shortage and age profile of the building control profession needs to be addressed and the sector wants to work with Government on how to address these issues
- All tests carried out under BS 8414 should be available to building control and any enforcing authority responsible for fire safety. Both enforcement agencies should have the power to compel independent building control assessors to reveal relevant information
- The test method for BS 8414 should be published
- Any work on a high rise building which could compromise compartmentation (including cladding) should be notifiable to building control and the enforcing authority for fire safety in the building
- Cladding on high rise buildings should be subject to an accredited installers scheme

Post construction fire safety

- Uncertainty over the relative roles of councils and fire and rescue services and the relationship between the FSO and the Housing Act must be addressed. This could be done either by establishing that fire services or councils are the sole enforcement body or by clarifying powers and responsibilities of each (references to the enforcing authority below refer to either of the above outcomes). However, councils should not be put in a position where they are both the proprietor/landlord and regulator. Partnership with the fire and rescue service will be crucial in these instances
- The enforcing authority needs to be able to treat fire safety in high rise buildings as a whole with the powers to inspect dwellings as well as common parts (including the external envelope)

- The enforcing authority needs greater powers to act when a serious issue is identified. These should include taking control of a building as de facto freeholder where the freeholder fails to address a serious safety issue

- The Housing Health and Safety Rating system needs revising to remove questions over the power of enforcing authority to act in respect of cladding issues

- A responsible person must be made legally responsible for fire safety in high rise buildings as a whole, including dwellings whether leased or rented

- The responsible person must commission a fire risk assessment from a suitably qualified and accredited person holding a nationally agreed minimum level of qualification

- The fire risk assessment must be provided to residents on an individual basis (i.e. not simply displayed in a stairwell) and to the enforcing authority. Residents must be informed of their right to draw matters of concern to the enforcing authority and how to do so

- Consideration should be given as to whether some or all of the above measures might be appropriate for accommodation used by vulnerable groups in addition to high rise blocks.