

Building Safety update

Purpose of report

For discussion.

Summary

This report updates Committee members on the Building Safety Bill, the work for LGA that flows from its introduction, and outlines what aspects of the Committee's discussion at its last meeting about the fire at New Providence Wharf have been covered by the LGA's ongoing building safety work.

Recommendation

That members:

- (a) note and comment on the Bill and the proposed LGA work; and
- (b) note the LGA's wider building safety work in relation to the issues arising from the Committee's discussion about the fire at New Providence Wharf.

Actions

Officers to incorporate members' views in the LGA's ongoing building safety related work.

Contact officer: Charles Loft
Position: Senior Adviser
Phone no: 020 7665 3874
Email: Charles.loft@local.gov.uk

Building Safety update

Background

1. The Building Safety Bill was published in draft form on 20 July 2020 and was subjected to [pre-legislative scrutiny by the Housing, Communities and Local Government Select Committee](#).
2. A new version of the [Bill](#) was published on 5 July 2021 along with a [transition plan](#) (see also the annex) and a [response](#) to the select committee report.
3. The Bill establishes a Building Safety Regulator (BSR) within the Health and Safety Executive (HSE) to:
 - 3.1. implement the new, more stringent, regulatory regime for higher-risk buildings (defined as residential buildings over 18m and – following LGA and National Fire Chiefs Council (NFCC) lobbying – care homes and hospitals over 18m at the design and construction stage).
 - 3.2. oversee the safety and performance of all buildings.
 - 3.3. assist and encourage competence among the built environment industry, and registered building inspectors.
4. The BSR will rely on council building control services and environmental health teams and fire and rescue services to deliver the regime for higher-risk buildings, which is expected to involve multi-disciplinary teams not dissimilar to the Joint Inspection Team which the LGA currently hosts.
5. The details of this are already being worked upon and HSE has talked to NFCC about the implications for fire services. The LGA has raised the need for the Government and HSE to discuss this with fire and rescue authorities and the Home Office will be attending the meeting to do so (the Home Office is working on the implications for fire services although the Bill is the responsibility of the Ministry of Housing, Communities and Local Government (MHCLG)).
6. The Bill places the HSE and local regulators under a duty to cooperate and gives the HSE the power to direct councils and fire services. The latter power is to be used only in exceptional circumstances and the Bill provides safeguards to prevent it becoming a default option.
7. New buildings will have to pass through three regulatory Gateways in relation to safety – at the planning stage; at the final design stage (before construction can begin); and immediately before occupation when construction is complete.
8. In occupation, buildings will need to be registered with the BSR and will require a safety case. The Accountable Person (AP, essentially the owner or managing agent) will need to maintain a Golden Thread of information about the building.
9. The AP will have a duty to listen to residents who raise building safety concerns – and if residents feel ignored, they can raise issues with the BSR.

10. Leaseholders will have to pay a Building Safety Charge (BSC) that covers the costs of operating the new regime.
11. The BSC does not cover the cost of remediation works that are required as a result of BSR interventions. These will be chargeable under existing arrangements, which vary according to leases, but generally allow APs to pass costs on to leaseholders. The Bill will prevent APs doing this until they have considered other options such as warrantees, government funds and litigation. However, this will not force APs to sue builders before they can pass costs on to leaseholders.
12. The Bill also extends the period of time action can be taken under the Defective Premises Act 1972 and enacts section 38 of the Building Act 1984. There is uncertainty as to whether either of these measures can assist leaseholders.
13. The first stage of the new regime is the introduction of [Planning Gateway One](#) in August which will require those planning to build buildings in scope of the new regime to produce a fire statement to ensure applicants have considered fire safety issues as they relate to land use planning matters (e.g. layout and access).

Issues

14. The main issue for Fire and Rescue Authorities (FRAs) arising from the Bill are:
 - 14.1. The shortage of expertise both inside the fire and rescue service and in private industry, including but not confined to the shortage of fire engineers;
 - 14.2. The funding for training and capacity increase ahead of implementation;
 - 14.3. The operation of the recharging scheme that allows Fire and Rescue Services (FRS) to reclaim cost of BSR work from HSE;
 - 14.4. The interaction of the new Bill and the Fire Safety Order/Fire Safety Act (for example with FRS officers sharing different powers and duties – and the ability to reclaim expenditure - depending on whether they are inspecting as part of the BSR team or not); and
 - 14.5. The balance of FRA responsibility for the fire service and the duty to cooperate with HSE.
15. The LGA has also expressed concern about the scope of the Bill, the speed at which its scope can be expanded and the constraints on its expansion. We have argued that height is not an effective determinant of risk and that care homes under 18m should be included in the new regime.
16. The Bill arrives at a time when fire and rescue services are conducting the Building Risk Review, inspecting and/or assuring all residential buildings over 18m by the end of 2021, and preparing for the commencement of the Fire Safety Act. These activities require coordination with the development of FRSs' new role under the Building Safety Bill.
17. The LGA has expressed the following concerns about the Bill beyond the FRA-specific points:
 - 17.1. The difficulty of funding building safety measures without bankrupting leaseholders.

- 17.2. The conflict between the new building safety system and the Government's planning white paper.
- 17.3. The adequacy of the product safety provisions.
- 17.4. The limited removal of competition in building control.

Fire safety implications arising from the New Provide Wharf fire

18. At the Committee's last meeting it received a report from the London Fire Brigade Commissioner, Andy Roe, on the fire at New Providence Wharf in early May. During the course of the discussion a number of issues were raised by members and the Commissioner, including:

18.1. Building safety reforms

- 18.1.1. The fact new buildings are still not being built safely.
- 18.1.2. The need for ensuring more building control inspectors and chartered surveyors are trained on fire safety and that professional indemnity insurance is available for professionals working on cladding issues such as chartered surveyors.
- 18.1.3. The need for the government's building safety reforms to address fire safety issues arising from permitted development rights and office conversions.
- 18.1.4. The need to revise building regulation requirements to ensure more fire safety measures (such as automatic fire suppression systems, more than one stairwell and provision of firefighting lifts) were included as standard measures in new construction projects.

18.2. Interim measures

- 18.2.1. The need to move from a reliance on waking watches to more automated alarm systems to alert residents in the event of a fire in a block with a simultaneous evacuation strategy.

18.3. Remediation

- 18.3.1. The need to increase the pace of remediation and to get those in the construction industry with the funding and ability to take action to take the issue of remediation seriously.
- 18.3.2. Consideration of the right balance in investing in removing cladding as compared with investment in other fire safety measures such as automatic fire suppression systems.

18.4. High rise fire fighting

- 18.4.1. Given the complexities in fire fighting in high rise residential buildings the need for investment in training budgets to practice for this possibility.
- 18.4.2. With emerging evidence of the physical impact on firefighters of fighting high rise fires, consideration should be given to what this means for the height of high rise buildings in the future and what appropriate fire safety measures should be in place.

18.5. Disability and evacuation

- 18.5.1. The best way of ensuring those who are unable to self evacuate from residential buildings are kept safe.

19. As members will recall from previous building update papers considered by the Committee a number of these issues have been raised by the LGA and the NFCC in

relation to the government's building safety programme. Both the LGA and NFCC for example pushed for the early implementation of Gateway One (which is due to be introduced in August) to ensure that where construction of buildings starts before the new building safety regime comes into effect developers are building to a safer standard. We have also highlighted the shortage of fire safety expertise along with the need for funding so FRSs can invest in expanding the number of fire engineers, while the LGA adopted the recommendations of the Committee's working group on automatic fire suppression systems, and has called for the lowering of the height at which sprinklers are required in new residential buildings to 11m. The Committee has also raised with the Fire Minister the need for the new building safety regime to apply to high-rise buildings converted from offices into residential use.

20. Earlier this year the government opened the £30 million Waking Watch Fund to enable building owners to replace waking watches with alarm systems, and applications for the fund were reopened in May for a month to allow for additional applications.
21. The need for increased pace in remediation work, while also ensuring leaseholders do not have to pay to rectify problems they have not created, has been at the forefront of the LGA's lobbying work since the Grenfell Tower fire. The LGA pushed government to make funding available to cover all the costs of remediation work to increase the speed with which those buildings with unsafe cladding are remediated. This resulted government making funding available to social housing landlords and private building owners to remediate buildings with aluminium composite material cladding, and the creation of the Building Safety Fund which covers the remediation of other forms of unsafe cladding. Alongside lobbying for funding the LGA has also pressed for FRSs and councils to be provided with better enforcement tools, with the Fire Safety Act 2021 designed to assist FRSs, and the Joint Inspection Team the LGA hosts helping councils.
22. The separate item on the agenda about the personal emergency evacuation plans consultation will address how those who are unable to self-evacuate from residential buildings are better protected.

Implications for Wales

- 18 Building regulations and fire and rescue services are devolved responsibilities of the Welsh Assembly Government, and the main implications arising from the recommendations of the Hackitt Review and the government's response to it are on building regulations and fire safety in England. However the Welsh government has announced that it will be making the changes recommended in the report to the regulatory system in Wales, and the LGA has been keeping in contact to ensure the WLGA is kept informed of the latest developments in England.

Financial Implications

19 Although the LGA has set up the Joint Inspection Team, the cost of doing so is being met by MHCLG. Other work arising from this report will continue to be delivered within the planned staffing budget, which includes an additional fixed term post in the safer communities team to support the LGA's building safety work.

Next steps

20 Officers to continue to support the sector's work to keep residents safe and reform the buildings safety system, as directed by members.