

Building Safety update

Purpose of report

For discussion.

Summary

This report aims to update members on the LGA's building safety-related work since the Commission's last meeting.

Recommendation

That members note and comment on the LGA's building safety related work.

Action/s

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

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Building Safety update

Background

1. Since the Commission's last meeting, the Building Safety Bill has received Royal Assent the Fire Safety Act has commenced and the LGA has continued to work to support remediation.

Remediation

2. The LGA has already published [case studies](#) and a document on [principles of effective regulation](#) and has worked closely with Department of Levelling Up, Housing and Communities (DLUHC) officers and the National Fire Chiefs Council (NFCC) to promote joint working in this area, including through webinars that have reached over 600 council and fire service staff and through the work of the Joint Inspection Team which DLUHC funds.
3. Two related pieces of work are underway that will impact Fire and Rescue Services (FRSs).
 - 3.1. The DLUHC-led group Remediation Partners continues to work on a framework to support remediation, based on proposals for regional meetings between FRS and local authority environmental health teams in line with the Principles for Effective Regulation document. These regional meetings are expected to be based on the NFCC regions. The initial focus of activity is expected to be 'missing buildings', i.e. those with interim fire safety measures which have not applied for funding to begin remediation.
 - 3.2. Discussions are under way with DLUHC and NFCC to support a coordinated audit of risk within medium-rise residential buildings (11-18m).
4. While it is clear that there are a number of buildings under 18m that present a risk to life as a result of the failure of the regulatory system over twenty years, and the irresponsible behaviour of some industry actors, we do not have accurate data on the true extent of this problem; nor do we know how widespread the over-provision of waking watches may be.
5. The LGA and NFCC therefore support the principle that we should improve our knowledge in this field. However, both organisations have conveyed to DLUHC that existing regulatory frameworks are not designed to prohibit excessively risk-averse behaviour and it is unrealistic to think that a programme of inspection by either fire service or council regulators will be able to eliminate it, especially given the absence of powers to do so and the uncertainty around personal emergency evacuation plans (PEEPs).
6. LGA officers have sought a clear steer from Government on when those parts of the Building Safety Act that relate to funding for remediation can be expected to commence and what their impact will be and have stressed the need for the Government to set out clear expectations in regard to enforcement action.
7. The Joint Inspection Team has secured funding for the next two years which will see it expand significantly. In effect it will triple in capacity by the end of this financial year.

Building Safety Act

8. The Act received Royal Assent last month. There are a significant number of pieces of secondary legislation that will need to be passed in order to set up the new Building Safety Regime. There are also a number of questions we need to continue to ask. Those relating to the FRS are set out below:
9. **Will we end up with an effective relationship between the demands on FRSs made by the Building Safety Regulator and the funding available to expand capacity in the protection sphere?** The NFCC has not been given the funding it asked for to deliver the Health and Safety Executive's (HSE) plan. Discussions on the extent to which the plan needs to change to take account of this are ongoing.
10. **What will the impact be of the provisions protecting leaseholders on the ability to pay for remediation?** We are seeking clarification from officials on the impact of the Act and associated measures. In particular it is currently unclear what will happen in blocks where there is no warrantee and no successful claim against the developer and the cost of remediation is too great to be covered by leaseholders within the cap. In theory the freeholder is expected to pay, but that is unlikely if the sum is large as freeholds are not particularly valuable; moreover the freeholder will in many cases be the leaseholders acting collectively.
11. The chief concern here for FRSs is that the government wants councils and fire services to take enforcement action to drive remediation; this is not going to work if there is no funding available to pay for remediation (a related issue is that we do not yet know when these provisions commence and until they do it is likely that landlords will drag their feet to ensure they do not miss out on funding by acting before the support is in place).
12. **How effectively will the Act be aligned in operation with the Fire Safety Act?** An important issue here is that FRS staff may attend inspections of high-rise residential buildings as part of a Building Safety Regulator multi-disciplinary team, work for which cost recovery funding is available. In doing so they may come across issues that require addressing under the Fire Safety Order, work which cannot be covered by cost recovery. This work would not have been done in the normal course of events, because inspecting this building would not take place under the Integrated Risk Management Plan (IRMP). As a result resource will be diverted from work prioritised under the IRMP to work that does not meet that test. While this is unlikely to matter in individual cases, in some areas the sheer volume of work that may arise in this way could have implications for delivery of IRMP. The LGA and NFCC continue to seek to influence the HSE's setting-up of the new regulator to ensure this alignment takes place

Fire Safety Act

13. The [Act](#) commenced on 18 May. This was followed by regulations implementing most of the recommendations made by phase one of the Grenfell Tower inquiry. This was announced in a [written ministerial statement](#). The NFCC has published an [FSA page](#) and [a series of FAQs](#) on both the Act and the regulations on its website and the Home Office has provided some [guidance](#).
14. The Act requires responsible persons to consider the need to update their fire risk assessment to take account of external wall systems. A [Fire Risk Assessment Prioritisation Tool](#) was launched alongside commencement. Its purpose is to inform

Responsible Persons (RPs) of how urgent the need to review their FRA is, in order to spread out demand for the limited resource of fire risk assessors.

15. FRSs will be expected to use the clarification provided by the Act to support remediation. See paragraph 2 above.
16. Following commencement of the Act the Home Office has laid regulations delivering to the recommendations of the Grenfell Inquiry Phase One report. These will come into effect in January 2023. These regulations will result in FRSs receiving various items of information from Responsible Persons in some buildings, including:
 - 16.1. Details of the materials and design of the external wall systems, including the level of risk posed and mitigations in place
 - 16.2. Floor plans (including the location of essential fire-fighting equipment) and a single page building plan
 - 16.3. Details of any lifts for use by firefighters and fire-fighting equipment which are out of order for a period of longer than 24 hours.
17. It will be necessary for FRSs to prepare for this change and consider how much information they are likely to receive and how best to deal with it.
18. A full list of the regulations and a set of fact sheets explaining them is available on the [Home Office website](#). Guidance will follow.
19. On 1 June, the government published the [consultation outcome](#) on the review of the ban on the use of combustible materials in and on the external walls of buildings. Updated guidance to fire safety and building regulations was also published:
 - 19.1. All new residential buildings over 11m will now have to provide Secure Information Boxes, with a requirement for new residential developments over 18m to also incorporate an Evacuation Alert System.
 - 19.2. There will be a widespread ban on the use of MCM PE cladding panels for all new buildings. The ban on the use of combustible materials in and on external walls will now also cover new hotels, hostels and boarding houses that are 18m and over.
 - 19.3. New statutory guidance will restrict the combustibility of materials used for the external walls of residential buildings, between 11-18m in height.

PEEPs

20. The regulations do not include Personal Emergency Evacuation Plans or Evacuation Plans.
21. The recommendations of the Grenfell Tower Inquiry Phase 1 report included the following:
 - e) (...) that the owner and manager of every high-rise residential building be required by law to prepare personal emergency evacuation plans for all residents whose ability

to self-evacuate may be compromised (such as persons with reduced mobility or cognition).

f) (...) that the owner and manager of every high-rise residential building be required by law to include up-to-date information about persons with reduced mobility and their associated PEEPs in the premises information box.

22. The Government ran a consultation on the Phase One recommendations which included a proposal to implement PEEPs and subsequently ran a second consultation on the subject. This closed on 19 July 2021 and alongside a [response](#) to the second consultation, a third [consultation](#) has now been published on 18 May containing new proposals, including a proposal called Emergency Evacuation Information Sharing (EEIS).
23. The latest consultation proposes that Responsible Persons of buildings with a simultaneous evacuation policy in place (rather than a stay put policy) are **required** to:
 - 23.1. ask residents to make themselves known to the Responsible Person for their building if they consider they would need support to evacuate in the event of a fire
 - 23.2. offer a Person-Centred Fire Risk Assessment (PCFRA) checklist (example found [here](#)) and connect them with a home fire safety visit from the local Fire and Rescue Service. This should consider whether there is something present (or lacking) in the common areas that hinders the individual's ability to self-evacuate. There would be no requirement to act on the conclusions of that process.
24. Responsible Persons would also be **required** to provide Fire and Rescue Services with up-to-date information on where these residents live within the building.
25. No obligations about PEEPs are proposed for RPs in buildings that do not have interim fire safety measures. This falls short of what the Grenfell Tower Inquiry recommended and what the Equalities Act requires of social landlords as we understand it.
26. The Home Office is also seeking examples of existing PEEPs for residential buildings, agreed between resident and RP, that provide for evacuation from a building, that at least partially:
 - avoids the staffing up of buildings to enact the PEEPs
 - avoids the liability issues for RPs and third parties who are enacting the PEEPs such as friends or neighbours
 - avoids the safety issues in enacting them e.g. the blocking of stairwells.
27. The Government are also setting up a working group the LGA called for in our consultation response that will look at how neighbour assistance would work (i.e. how neighbours will help disabled residents evacuate in the event of a fire).
28. There is much in the proposal that reflects the LGA's response to the second consultation, which drew attention to the practical difficulties of enabling someone who cannot self-evacuate to leave a building without the assistance of the fire service. Nevertheless, it is important to stress that the LGA has always argued that in buildings

with a simultaneous evacuation policy there must be measures in place to allow everyone to evacuate. This is also the position of the National Fire Chiefs Council.

29. Members will be aware that the LGA recently shared with its members legal advice on the requirements on social landlords in respect of Personal Emergency Evacuation Plans under the Equalities Act. This advice was in effect that social landlords had a duty to identify disabled residents, consider their evacuation needs and make reasonable adjustments. The LGA advised its members to seek their own legal advice on this matter.
30. As this issue impacts on the fire service in particular, the LGA position was discussed with Fire Services Management Committee lead members, who agreed as follows:
- 30.1. **The LGA does not support the proposal in the consultation because it does not require the responsible person in a building with simultaneous evacuation to have a plan on how the resident would evacuate in the event of a fire.**
- 30.2. This would leave the FRS in an impossible position, arguably transferring responsibility from the duty-holder to the fire service; while rescue is a back-up option, which is facilitated by EEIS; it cannot be **the first and only option** in a block with Simultaneous Evacuation. In addition this policy would in our view be unlawful under the Equalities Act if adopted by a local authority.
- 30.3. **The LGA has called for the Home Office to meet its duty under Article 50 of the Fire Safety Order and provide appropriate guidance to social landlords, covering duties under Equalities Act as well as any fire regulations.**
- 30.4. Under the Equalities Act social landlords have a duty to disabled residents in all blocks, not just those with simultaneous evacuation. The proposals being consulted upon place no duties on responsible persons in stay-put blocks, but this would not remove the duty on social landlords.
- 30.5. **The proposed group to discuss neighbour assistance is welcome but should be able to explore the issue of PEEPs more widely.** The Home Office has indicated that this is acceptable, but it would like to start with neighbour assistance.
31. The LGA will pursue these arguments in responding to the consultation and in responding to the consultation on a new edition of the *Fire Safety in Purpose-built Blocks of Flats* guide.

Implications for Wales

32. The Fire Safety Act came into force in Wales in [October 2021](#). The new regulations passed under the FSO only apply in England. 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

33. Although the LGA has set up the Joint Inspection Team, the cost of doing so is being met by DLUHC. 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 community's team to support the LGA's building safety work.

34. The cost of developing PEEPs under the Equalities Act is impossible to quantify as we do not currently know what would be considered reasonable measures.

Next steps

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