

Meeting: Fire Commission

Date: 14 October 2022

Building Safety Update

Purpose of report

For noting.

Summary

This report aims to update members on the LGA's building safety-related work since the last Commission meeting and suggest some areas to discuss with the Health and Safety Executive (HSE). Sandra Tomlinson and James Tancred from HSE will be in attendance at the Commission.

Recommendation

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

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Building Safety Update

Background

1. Since the Commission's last meeting, the LGA has continued to monitor the progress of the Building Safety Act's implementation and to plan related improvement work. We have responded to the [Emergency Evacuation Information Sharing \(EEIS\) Consultation](#) and continued to support remediation.

Establishing the Building Safety Regulator

2. As members will be aware, the Act sets up a new system of Gateways through which new residential buildings over 18m must pass and a new system of safety regulation for buildings over 18m once they are occupied.
3. These systems are the responsibility of the Building Safety Regulator (BSR) but will be delivered through multi-disciplinary teams including Fire and Rescue Service (FRS) staff.
4. FRS and local authority staff may be allocated to deal with buildings outside their area through a system of regional hubs that will fill gaps in staffing. These gaps are expected to arise because some areas will have a lot of high-rise buildings and local fire services can be expected to develop expertise in dealing with them, whereas some will have relatively few and the local FRS may not have the staff to deal with complex cases. A similar arrangement is planned in respect of building control. The National Fire Chiefs Council (NFCC) is working with HSE to deliver the hubs and the LGA and NFCC are represented on a working group that is discussing memorandums of understanding (MoUs) - which will be required between the BSR and every FRS.
5. There is currently a [plethora of consultations](#) around the new building safety regime.
 - 5.1. The [in-occupation regime](#) for high rise buildings is of interest as the FRS will have an enforcement role and the new system needs to dovetail with the Fire safety Order/Act.
 - 5.2. The [new building control regime](#) is of interest as FRS staff will be member so the multi-disciplinary teams dealing with high rise buildings under this regime.
 - 5.3. Consequently, the [fees and charges regime](#) is also relevant, as this will provide the funding for FRS staff working alongside the BSR.
6. The LGA continues to work with NFCC and Local Authority Building Control (LABC) to support the HSE's delivery of the new regime, including setting up the new Building Safety Regulator.
7. HSE will be presenting its work on the BSR to the Commission. It has [a page](#) about the new regulator on its website, where you can sign up to regular bulletins. The implementation timetable for the new regime is as follows:

April 2023

- Building registration opens
- New buildings where work is underway must be registered before occupation
- New buildings where work starts on or after 1 April 2023 must follow the gateway approval process during design and construction

October 2023

- Registration deadline for existing occupied buildings
- Building inspector and building control approver registers open (not April 2024 as stated on HSE website)

April 2024

- BSR starts to call in buildings for assessment and issues building certificates

October 2024

- Registration deadline for building inspectors and building control approvers

8. Current issues around the implementation of the new regime that may be of interest to the Fire Commission include:

- 8.1. **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 HSE's plan.
- 8.2. **Will FRSs be left with additional unfunded work under the Fire Safety Order (FSO)?** There is a danger that fire service staff performing work for the BSR (which is cost-recoverable), encounter issues under the FSO. If the BSR takes no action on the building or takes action that does not resolve concerns under the FSO, the fire service could be forced to act with no ability to recover the cost of its actions (as FSO work is not cost-recoverable) and is therefore drawn into resource-intensive work that would not feature in the IRMP.
- 8.3. **The need for clarity.** We have yet to be given detail on the makeup of the multi-disciplinary teams in the in-occupation phase, where the role of building control has not yet been decided by HSE; we have also yet to nail down key details of the hub system and the MOU process; the requirements of safety cases, which are proving difficult to develop.

Remediation

Progress

9. DLUHC [statistics](#) show that by the end of August 2022, 95% (462) of all identified high-rise residential and publicly owned buildings in England had either completed or started remediation work to remove and replace unsafe Aluminium Composite Material (ACM) cladding (98% of buildings identified at 31 December 2019). There has been no change since the end of July. All social sector residential buildings have either completed or started remediation. 99% have had their ACM cladding removed.
10. 438 buildings (90% of all identified buildings) no longer have unsafe ACM cladding systems – an increase of one since the end of July. 385 (79% of all buildings) have completed ACM remediation works – an increase of three since the end of July. This includes 340 (70% of all buildings) which have received building control sign off – no change since the end of July. These figures are changing very slowly.
11. On 28th July 2022, the government's £4.5 billion Building Safety Fund reopened for new applications. Buildings over 18m with cladding issues are eligible to apply for the fund with guidance for applicants available [here](#). More information for leaseholders about the

Building Safety Fund and what it covers can be accessed [here](#). Leaseholders can check if they qualify for the cost protections under the Building Safety Act using the government's new [Leaseholder Protections Checker](#) with [further guidance](#) available. Early indications are that some "missing" buildings have already applied.

12. [Statistics to the end of August](#) show 2824 Private Sector Registrations, covering 3212 buildings. The registration process is a form of pre-approval. Of the 2824 registrations, a total of 2570 (2930 buildings) had been reviewed by the end of August - an increase of 2 (4) since the end of July. Of these:
 - 936 (1018 buildings) were proceeding to an application for funding
 - 291 full applications have been approved and
 - 477 are at Pre-tender stage.
 - 781 (959) have been deemed ineligible and
 - 718 (798) have been withdrawn.
13. 44 applications (45 buildings) were being reviewed and there are 91 (110) where the applicant needs to provide additional information; in 254 (284) additional cases the owner has not responded to requests for more information.
14. The fund also covers the costs social landlords would otherwise pass on to leaseholders. 222 (253) applications have been made. So far 55 (56) have been rejected or withdrawn and 152 (177) approved.
15. £1,484 million has been approved for the remediation of unsafe non-ACM cladding from the Building Safety Fund, of which £1,345 million is for private sector remediation and £139 million for social sector remediation.

Remediation Partners

16. The Department of Levelling Up, Housing and Communities (DLUHC) has set up a remediation partners group to look at how remediation can be driven by regulatory activity. As part of this work it is establishing regional meetings between fire services and councils designed to improve information sharing and dovetail working in this area in line with [advice hosted by the LGA](#). The LGA supports this approach as the best way to avoid unnecessary duplication, share intelligence and spread best practice. It has emphasised to DLUHC the primacy of the IRMP and the life-safety role of the FRS. So far a meeting has been held in London and we anticipate other regional meetings will take place later this year. The LGA has commissioned a series of [case studies](#) on joint working between councils and FRSs on building safety
17. Officers are seeking information from councils that plan to use remediation orders introduced under the Building Safety Act – or would be interested in doing so.

Leaseholder protection

18. On 28th June 2022, new leaseholder protections in the Building Safety Act came into effect meaning building owners and landlords are now responsible for making buildings safe and the first port of call to fund any necessary repairs. It is illegal for costs of cladding repairs and those beyond the leaseholder caps for non-cladding defects to be passed to qualifying leaseholders.
19. The explanatory notes to the Building Safety Act are here: https://www.legislation.gov.uk/ukpga/2022/30/pdfs/ukpgaen_20220030_en.pdf; the leaseholder protections are sections 116-125 and Schedule 8. New Government guidance on the leaseholder protections can be found here:

<https://www.gov.uk/guidance/building-safety-leaseholder-protections-guidance-for-leaseholders>.

20. On 22 September the new DLUHC Secretary of State, Simon Clark, set out his intentions regarding leaseholder costs in a [Daily Telegraph op-ed piece reproduced on the DLUHC website](#). Key points in the piece are:
- 20.1. 49 of the largest housebuilders have now signed a public pledge to fix unsafe buildings that they developed or refurbished. These pledges will shortly be turned into legally binding contracts.
 - 20.2. Any housebuilders that fail to act responsibly may be blocked from commencing developments and from being granted building control sign-off for their buildings.
 - 20.3. DLUHC's Recovery Strategy Unit will be launching legal action against freeholders who are not coming forward and accepting government money to make buildings safe 'very soon'.

Joint Inspection Team (JIT)

21. The JIT is expanding to three teams until at least March 2024 and members are encouraged to consider whether any buildings in their area might benefit from a JIT inspection. Contact Brian.Castle@local.gov.uk with any suggestions or enquiries.

Fire Safety Act

22. The LGA and National Fire Chiefs Council (NFCC) are members of a group established by the Home Office to monitor the impact of the Fire Safety Act. The major requirement arising at present is to include external wall systems and fire doors in fire risk assessments (FRAs). The [FRA prioritisation tool](#) will help landlords prioritise the order in which they apply this requirement to their stock. Officers welcome any update on councils' and FRS's experience.
23. The [regulations](#) implementing the Grenfell Tower Inquiry's Phase One recommendations are coming into force in January. These could lead to a significant amount of information being submitted to fire services. In residential buildings over 18m, new requirements on Responsible Persons include providing FRS with:
- 23.1. up-to-date electronic building floor plans
 - 23.2. information about the design and materials of a high-rise building's external wall system and to inform the Fire and Rescue Service of any material changes to these walls. Also, they will be required to provide information in relation to the level of risk that the design and materials of the external wall structure gives rise to and any mitigating steps taken.
 - 23.3. reports of any defective lifts intended for use by firefighters, and evacuation lifts in their building and defective firefighting equipment lifts.

Personal Emergency Evacuation Plans (PEEPs)

24. On 9th August 2022, we submitted our [Emergency Evacuation Information Sharing \(EEIS+\) consultation response](#), in which we argued that the proposal could form the basis of a useful backup to the requirement for Responsible Persons (RPs) to identify residents who are unable to self-evacuate and make every reasonable adjustment to ensure that they can do so, through the provision of a Personal Emergency Evacuation Plan. However, we underlined that EEIS+ should never be Plan A, especially as we are aware that the NFCC has significant reservations about imposing on the fire service any form of EEIS+ which does not have the support of those with operational responsibility

for making it work. To do so would be to shift responsibility from RPs to the fire service and fundamentally undermine the principles underpinning the Fire Safety Order.

25. On 1st September 2022, the LGA attended the first Evacuation and Fire Safety Working Group meeting to discuss volunteer assistance for residents who are unable to self-evacuate due to certain protected characteristics. This group will also be used to explore how PEEPs could work more broadly.
26. We are seeking examples of volunteer assistance as a way of delivering PEEPs. If anyone already knows of any schemes like this, contact Charles.loft@local.gov.uk

Simultaneous Evacuation Guidance

27. On 24th August 2022, a new edition of the industry guide [The Simultaneous Evacuation Guidance](#) (SEG) was published, coordinated by NFCC in partnership with a range of stakeholders. The [fourth edition](#) replaces the third edition published in October 2020. The SEG, which has been put together by fire safety professionals, seeks to actively discourage the ongoing and prolonged use of a waking watch. Key aims of the guide are:
 - 27.1. Ensuring those with responsibility for buildings fully understand the decision-making process before deciding that a change in evacuation strategy is required
 - 27.2. Clearer emphasis on resident engagement
 - 27.3. An end to risk averse 'one size fits all' application of on-site staffing (waking watches or evacuation management) when this is disproportionate to the risk.

Improvement

28. The LGA has committed to:
 - 28.1. Webinars on building safety following the Building Safety Act getting Royal Assent and the commencement of the Fire Safety Act, along with additional resources provided to councils through case studies and publications.
 - 28.2. Delivery of the building safety political leadership programme (Leadership Essentials) to housing portfolio holders.
 - 28.3. An E-learning module available to officers and elected members to inform them about councils' duties as one of the regulators supporting the Building Safety Regulator.
 - 28.4. Work in partnership with HSE to support their programme of engagement with local authorities in areas with High Rise Buildings.
29. A Building Safety [Leadership Essentials](#) event for councillors is being held in person at Warwick University on Tuesday, 18th October – Wednesday, 19th October 2022. For more information or to book, contact: Grace Collins Telephone: 020 7664 3054 Email: Grace.Collins@local.gov.uk
30. Three webinars for officers and councillors ((including from councils with ALMOs) have been arranged, following on from the one on 5 July. These will include sessions from the Home Office on the impact of the Fire Safety Act and preparation for the new regs coming in in January 2023 – and from HSE on the Building Safety Regulator.
 - Monday 7 November 11.30am-1:30pm
 - Monday 19 December 1pm – 3.00pm
 - Thursday 9 March 2pm– 4.00pm

31. We are developing an eLearning module on building control, aimed at councillors, portfolio holders and director-level officers. This will be commissioned September/October.

Other

32. DLUHC have now published guidance on the new requirements relating to smoke alarms and carbon monoxide alarms. Although it is not explicitly referenced in the guidance, DLUHC officials have confirmed that the Regulations do not apply to communal areas. Registered providers of social housing will also be expected to self-refer to the Regulator of Social Housing whilst they remain non-compliant on the basis of not meeting their statutory duties.

32.1. **Guidance for landlords and tenants:**

<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords>

32.2. **Guidance for local housing authorities:**

<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-local-authorities>

Implications for Wales

33. 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

34. Although the LGA has set up the Joint Inspection Team, the cost of doing so is being met by DLUHC. 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.
35. 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.
36. 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.

Equalities implications

37. EEIS+ and PEEPs are directly related to councils' duties under the Equality Act 2010. The group of people affected by building safety issues will be broad and include a wide variety of potential equalities issues.
38. The Evacuation and Fire Safety Working Group includes representatives of disabled residents and communities and the LGA will continue to promote their contribution – we have already done so in the LGA EEIS+ Consultation Response in which we recommended the Home Office should seek advice from those with lived experience on their proposals.

Next steps

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