

Response to the Independent Building Regulations Review

Representation by London Councils

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Summary of recommendations

London Councils represents London's 32 borough councils and the City of London. It is a cross party organisation that works on behalf of all its member authorities regardless of political persuasion

1. Revisions should be brought forward to Approved Document B to provide improved standards and make them more understandable to all within the building and development process – including tenants and residents.
2. The policy within Approved Document B stipulating greater fire resistance above 18 metres should be reduced to 12 metres to reflect the current capabilities of the London Fire Brigade.
3. DCLG should clarify the definition of common parts of the building.
4. Amendments should be brought forward to the Housing Act 2004 to strengthen local authorities' powers to tackle potential fire hazards.
5. Approved Inspectors should be required to adhere to the same standards as Local Authority Building Control
6. Regulatory changes should be brought about to ensure that construction work on a development should not begin without prior acquisition of a certificate of approval.
7. Clerk of works to oversee all development/renovation works, and will be responsible for ensuring that all work has been undertaken properly.
8. Mandatory membership for FRA assessors of an accredited fire risk assessment scheme.
9. HCA Tenant Involvement and Empowerment Standard to be updated to incorporate specific standards around fire safety.
10. The interim report should outline which cladding systems will be acceptable following the conclusion of this review.
11. The review should recommend that remedial works needed to make tenants safe and feel safe should be funded by central government.
12. The substitution of desktop studies for fire tests should be stopped.
13. We would support the introduction of a separate standard for high-rise development.

The context

The tragedy that unfolded at Grenfell Tower in June remains very sharp in the minds of all in local government – council leaders, ward councillors and officers.

Since the fire, the London boroughs have been engaged in a substantial programme of work to ensure that residents of high-rise buildings in the capital are safe and feel safe. We have worked with the Department of Communities and Local Government (DCLG) and their Building Research Establishment (BRE) testing programme to ensure that we can, as rapidly as possible, identify high-rise buildings with unsafe cladding systems. We have taken emergency action in close collaboration with the London Fire Brigade (LFB) to guarantee our stock is safe, as well as working with housing associations and private landlords.

This programme has required a massive and ongoing engagement with residents, both in the high-rise blocks in London with unsafe cladding, and tenants in other high-rise blocks who have concerns about their safety after Grenfell. We are acutely aware of their concerns about the homes in which they live. We know this through their ongoing interactions with their local councillors and front-line housing staff, as well as where we are working with them and the LFB to carry out specific emergency work.

Our experience of this programme has taught us that there are significant shortcomings in the regulatory system. It is very difficult to ensure that residents feel safe when there is little confidence that we have a regulatory system which can ensure they are safe.

To give one example, some boroughs have already removed unsafe cladding identified by the testing programme from high-rise buildings that they own, and others are in the process of removing it. However, there is as yet no confidence as to which cladding systems we can replace these with safely.

Therefore, we supported the Chair of the Local Government Association, Lord Porter's call for an urgent review of building regulations and welcomed the Secretary of State's establishment of the Independent Review of Building Regulations and Fire Safety, and your appointment as its chair.

It is the responsibility of all levels of government, the public services and the building and construction sectors to work together to ensure that such a disaster can never happen again. Local government will have lessons to learn. We hope that your initial findings will enable us to undertake the remedial actions that will ensure residents are safe and feel safe. We also hope you will be able to draw definitive conclusions around the systemic failures in the building regulations that the tragedy at Grenfell Tower, and the subsequent fire safety testing programme have very clearly highlighted so we can develop a regulatory system fit for purpose for the future.

London Councils' response draws upon the London Housing Directors' Group response. This group has the professional experience required to respond in detail. Their response is taken from meetings conducted with separate boroughs with officers working across building control, housing strategy and policy, housing management and Housing Act 2004 enforcement roles. They have also met with Local Authority Building Control, and received feedback from their Fire Safety Group which includes representatives of the LFB, LGA, DCLG and the Greater London Authority.

In addition to our full response we believe it is necessary to make these overarching observations about the leadership and resources which we will need to ensure that all Londoners living in high-rise are safe and feel safe.

Leadership

The shortcomings in the building regulations were revealed by the Lakanal House Fire in 2009 where six people died. They were crystallised by the Coroner in her 2013 Inquest. In particular she noted in her Rule 43 Letter to the then Secretary of State, Eric Pickles, that Approved Document B is 'a most difficult document to use' and recommended that it be reviewed by the DCLG. Since the Lakanal fire in 2009, Southwark Council has taken urgent and substantial action to improve the safety of all of its stock. Since the Coroners Rule 43 Letter in 2013 there has been no review of Approved Document B.

In addition, in 2013 the Government announced its intention to reduce regulation, in all areas affecting business and not just construction, by using a 'one in, two out', rule of thumb. This does not create risk based regulation which balances the nature and probability of the risk against the regulatory burden and resources to enforce it. Instead it risks creating a culture which sees less regulation as good, with little or no weight given to the risks which we as a society are attempting to guard against.

Taken together, the lack of urgency in responding to the formal recommendations of the Coroner in the wake of a fatal fire, and primacy on deregulation for its own sake have helped create a culture which mitigates against an effective and efficient regulatory system and fire safety.

We shall touch briefly upon the implications for local political leadership below.

Resources

Local authorities have a key role in building regulation and fire safety. They have been attempting to meet their legal duties in a very challenging financial landscape. Since 2010-11, core funding from central government will have fallen by 63 per cent in real terms over the decade to 2019-20.

While local authorities continue to believe that they can deploy sufficient resources to deliver their statutory responsibilities, these resources have become increasingly attenuated.

The number of people working for local authority building control and in environmental health enforcement teams has been decreasing. There are many excellent Approved Inspectors, however, the creation of competition between them and local authority building control serves to undermine the sustainability of local authority building control. It undermines the desired outcome of residents being safe. For example, the legislation does not require Approved Inspectors to share information with the relevant local authority, or even central government, about the buildings they have certified. Limiting access to the relevant information therefore has a further impact on local authorities capacity to deliver on their statutory role to enforce standards in building control.

In addition to reductions in core funding, local authorities have faced limitations on their Housing Revenue Accounts (HRA) that have reduced the scope for delivering new housing development as well as improvements and renovations in their existing stock. The 1 per cent reduction in social sector rents, which has been in place since 2016/17, has left a shortfall of £800million in London authorities' HRAs (even with the return to CPI +1% in 2020). Furthermore, the imposition of a cap on HRA borrowing has left insufficient headroom for investment in councils' housing stock.

Given the limited and reducing resources available, local authorities have been required to prioritise their HRA activity between the objectives of delivering new and much needed housing supply while also improving the standard of their existing stock, maintaining decent home standards, and other landlord duties.

In summary, for any regulatory system to succeed it requires leadership and resources that places a premium on the outcome - that Londoners living in high-rise blocks are safe and feel safe.

In the wake of Grenfell, local leaders may consider whether or not we have articulated our concerns regarding our ability to deliver building regulations and fire safety without the required resources or the necessary standard of building regulations confidently, or powerfully, or stridently enough, or whether we have placed too great a premium on being seen to step up to the plate come what may.

Responses to consultation questions

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?*

Approved Document B

It is the London boroughs' view that the current building regulations, particularly Approved Document B, causes significant confusion. It was the view of the Coroner leading the inquest into the Lakanal House fire in her Rule 43 letter to the Secretary of State for Communities and Local Government (dated 28 March 2013) that Approved Document B was "a most difficult document to use". In her letter she outlined a recommendation that it be reviewed to ensure that it:

- "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 and the circumstances in which attention should be paid to whether proposed work might reduce existing fire protection.
- 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, not just to professionals who may already have a depth of knowledge of building regulations and building control matters.
- Provides guidance which is of assistance to those involved in maintenance and refurbishment of older housing stock, and not only those engaged in design and construction of new buildings."

The Secretary of State's response to the Coroner noted that a process of "simplification" would be brought forward as part "of a formal review leading to the publication of a new edition of Approved Documentation in 2016/17". The response also noted that "the design of fire protection in buildings is a complex subject and should remain, to some extent, in the realm of professionals".

This was a missed opportunity to have addressed the weaknesses within Approved Document B. We think that the Independent Review of Building Regulations may wish to understand further how far advanced the review promised by the former Secretary of State was, and – in particular – examine whether there are sufficient mechanisms in place to ensure that government brings forward revisions to building regulations where they are needed.

Further to the lack of clarity in Approved Document B, there is a clear contradiction in regards to combustibility standards in high rise development. Current regulations require a higher standard of fire resistance for compartmentalisation above 18 metres (30 minutes resistance up to 18 metres, and 60 minutes above this). However, currently, the London Fire Brigade equipment can only reach a height of 12 metres. The regulations should be revised to reflect the current capabilities of the fire brigade, and create a consistent standard between all tenure types (private and publicly owned) and between new and existing build.

Regulatory Reform Order

There are also ambiguities in the Regulatory Reform (Fire Safety) Order, particularly in relation to the definition of 'common parts' of the building. The coroner's letter following the Lakanal House fire also addressed this point, outlining that "there remains uncertainty about the scope of inspection for fire risk assessment purposes which should be undertaken in high rise residential buildings." She further recommended that "Government provide clear guidance on the definition of "common parts" of buildings containing multiple domestic premises...". The ambiguities around the definition of common parts has been further addressed by the government, with the main source of clarity regarding this being a Local Government Association publication (funded by DCLG), 'Fire Safety in Purpose-Built Blocks of Flats', which was published

in May 2012, prior to the Coroner's report. In our view, clarity around the definitions of common parts is still needed.

Housing Act 2004

The Housing Act 2004 should be strengthened so local authorities can deliver higher standards of fire safety. At present, under the Housing Health and Safety Rating System (HHSRS), local authorities are unable to take action to ensure that items imperative to the integrity of a block's fire protection system – such as fire resistant doors – are adequate unless it can demonstrate the issue poses a risk to a person within a year within a given dwelling. In this scenario, the probability of fire is so low that it often makes it difficult to enforce.

Approved Inspectors

London Councils is concerned that the role of AIs has led to problems with implementing the building regulations effectively. While there are a number of excellent AIs operating in the sector, the standards by which AIs operate are less than those for local authority building control. For instance, there is no requirement for an AI to examine plan details, issue a plan certificate or even attend site to inspect work in progress. AIs are permitted to exclude considering parts of a building carried out by competent persons scheme. AIs can accept work with nothing more than the identification of the site and allow work to continue with no obligation to have assessed and approved work within a pre-set time. Crucially, AIs are also not required to share any information on their work with local authorities or even the Government.

While AIs do require a licence from the Construction Industries Council (CIC) to operate (renewed every three years), an AI has never lost a licence for breaching the CIC code of conduct. Despite this, feedback from residential Environmental Health teams suggests a disproportionate number of hazards are found in homes approved by AIs. The market pressures within the sector, and the lower standards required of AIs, are concerning for local authorities. While we clearly acknowledge that the introduction of AIs into building control has had a significant impact on local authority income in the sector, the evidence is that the impact of AIs has been to reduce standards in the sector and create a less rigorous regime for ensuring that high standards are achieved. There is also a skill shortage of building inspectors generally, exacerbated by the 'poaching' of local authority staff.

Certificate of approval

At present development, including high-rise development can begin without a certificate of approval provided by the relevant body (although the building may only be occupied once a certificate has been provided). This should be revised to ensure the relevant fire safety plans have been signed off prior to construction commencing.

Recommendations

1. Revisions should be brought forward to Approved Document B to provide improved standards and make them more understandable to all within the building and development process – including tenants and residents.
2. The policy within Approved Document B stipulating greater fire resistance above 18 metres should be reduced to 12 metres to reflect the current capabilities of the London Fire Brigade.
3. DCLG should clarify the definition of common parts of the building.
4. Amendments should be brought forward to the Housing Act to strengthen local authorities' powers to tackle potential fire hazards.
5. AIs should be required to adhere to the same standards as Local Authority Building Control.
6. Regulatory changes should be brought about to ensure that construction work on a development should not begin without prior acquisition of a certificate of approval.

Roles and 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?***

Generally, the London boroughs work very well with the London Fire Brigade (LFB), and the RRO requiring consultation with the LFB in London on new buildings and a material change to existing buildings operates well. Most boroughs have an excellent working relationship with their LFB local borough commander. On a pan-London basis, local authorities have worked very closely to coordinate the response – including building inspections – following the disaster at Grenfell Tower. This builds on a history of good working. In 2013 a joint protocol was developed between the London boroughs and LFB to codify the divisions of responsibility in regards to enforcing the Housing Act 2004 and to seek to overcome the gaps and ambiguities in the regulatory framework.

Q3 Does the current system place a clear over-arching 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?

Many parties can be involved in large developments, so it is difficult for one person to be in control of the overall fire safety of the site. Building control is unable to be on site at every point of development and assess every fitting as it is made. We therefore believe it should be mandatory for a clerk of works to be employed on all sites, with responsibility for ensuring that development sufficiently meets the requirements set out in development plans (including fire safety) and that works are undertaken properly (for instance, the installation of cladding systems).

Recommendation

7. Clerk of works to oversee all development/renovation works, and will be responsible for ensuring that all work has been undertaken properly.

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?

London Councils believes that the impenetrability of building regulations, matched with a known skills shortage in the UK's construction sector, means that compliance has probably not met the standard it should do.

We are also concerned that there is a mixed standard of Fire Risk Assessment (FRA) being undertaken on behalf of boroughs. Since the Lakanal House fire, the London boroughs have worked hard (with colleagues at the LFB) to develop a better framework for FRAs and to share best practice on this front. The LFB has also produced a list of tips for finding a suitable person to undertake the FRA. However, we are concerned that there simply are not the skills and personnel available to ensure that FRAs are constantly undertaken to the highest standard. To highlight this, the Institute of Fire

Engineers notes that there are currently only 54 qualified Fire Engineers based in London. We also have doubts that the training required to qualify as a professional FRA assessor is sufficient.

We would welcome a move to demand that all fire risk assessors, including self-employed providers, should be members of an accredited fire risk assessment scheme and that a register is kept of all companies/individuals providing FRAs. Clearly, this would push up time taken and inspection costs, issues that must be balanced and mitigated to ensure the additional costs are not passed on to tenants and leaseholders.

Recommendation

8. Mandatory membership for FRA assessors of an accredited fire risk assessment scheme.

Enforcement and 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?***

LFB can and do serve Enforcement Notices, which are usually effective. In many cases, local authority Environment Health teams also serve effective notices under the Housing Act 2004.

Where enforcement powers are particularly deficient are, in our view, around enforcement of the Buildings Act 1984. The Act only allows the local authority to bring a case against a defendant who has undertaken unauthorised works within two years of completion, and the case must be taken against the person who carried out the works. Alternatively, or in addition, within a year of works being completed, the local authority could serve an enforcement notice demanding that the building owner undertakes works to address the infringement; with the threat that the council could undertake the work itself and subsequently recover costs. In reality, it is difficult for local authorities to prove, particularly without the cooperation of building owners or the relevant AI (if applicable), exactly when the works were completed and who by. The local authority also needs to become aware of the infringement, which is not always likely.

Tenants' and residents' voices 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?

While more can always be done, local authorities across London generally have excellent channels of communication with residents in their own housing stock. These have been utilised to great effect to keep tenants and residents in hundreds of tower blocks across London informed about the testing and safety initiatives that followed the fire at Grenfell Tower, and to understand the concerns of residents.

An aspect of tenant communication that could be reviewed is around the Homes and Communities Agency's (HCA) Tenant Involvement and Empowerment Standard, which sets standards for the involvement of tenants of registered providers across a comprehensive range of issues which might include maintenance. It sets an expectation upon the registered provider to provide feedback. It does not specifically identify concerns about fire safety. Following the fire at Grenfell Tower, it would be advisable for the HCA to update the Standard to distinctively address fire safety, which is a more immediate and lethal risk than most of those specifically addressed at present. This will also act as a driver to ensure that

once the regulations are reviewed they are communicated more effectively, not just to those professionals responsible but also to tenants, so they are empowered to express their concerns effectively to their landlords.

Recommendation

9. HCA Tenant Involvement and Empowerment Standard to be updated to incorporate specific standards around fire safety.

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***
- ***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 obvious concern from local government as to how the verification process for construction products allowed many items to be certified as compliant with the building regulations, when the subsequent Building Research Establishment testing programme has now deemed they are non-compliant. Notably this includes ACM cladding, which has been used in cladding systems now for many years, often to provide increased energy efficiency to tenants and solve problems where some towers had particular temperature issues.

Of particular concern is the testing of materials. Under the current system a desktop report from an accredited testing body is sufficient where no fire test data is available for a particular system. These reports are a matter of opinion and cannot be verified by building control. This use of desktop studies as a substitute for a fire test should be stopped.

The Grenfell Tower Inquiry will establish the exact reasons for the fire at that site. For local authorities more broadly, replacing materials previously considered as compliant under the building regulations regime will be costly.

A London Councils survey found that, based on responses from 21 London local authorities, the total potential cost of remedial work being undertaken in those council areas is estimated at £402 million – including £53 million to replace cladding systems that are now considered as deficient. £262 million is expected to be spent installing sprinkler systems in high rise developments, a retrofit that is now considered essential by many residents. We believe that meeting the cost of remedial works needed to address the flaws in the current building regulations should be forthcoming from central government.

Of particular concern for local authorities – and landlords more generally – is what cladding systems will be acceptable following the conclusion of this independent review. With many local authorities having already removed their cladding systems, guidance in the interim report as to which materials will be compliant with building regulations in the future would help local authorities to make a decision on replacement materials with confidence. Currently, the absence of guidance is making such decisions problematic.

Recommendations

10. The interim report should outline which cladding systems will be acceptable following the conclusion of this review.

11. The review should recommend that remedial works needed to make tenants safe and feel safe should be funded by central government.

12. The substitution of desktop studies for fire tests should be stopped

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? Where specifically do you think further differentiation might assist in ensuring adequate fire safety and what would be the benefits of such changes?

We would welcome a separate regulatory standard for tall buildings. The risks to life in tower blocks are different in two ways. On the one hand, the physical facts of a tower block mean that it is more difficult for residents to evacuate and fire fighters to extinguish when a fire takes place. On the other, the changes that will inevitably take place in the business model of a tower block over the life time of the building will also have a potentially detrimental impact on the safety of a very large group of people. Therefore, while it may be argued that the recommendations for change we have made above may be applicable across the board, we believe they must be introduced for tower blocks.

Recommendation

13. We would support the introduction of a separate standard for high-rise development.

London Councils
59½ Southwark Street
London SE1 0AL
www.londoncouncils.gov.uk

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