

LGA Briefing

Cladding and remedial fire safety work

House of Commons

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Key messages

- The Government needs to give social housing providers clear guidance on what materials can be used to replace unsafe aluminium composite material (ACM) cladding.
- Any revisions of the fire safety guidance on how to comply with the building regulations (Approved Document B) should make it clear that all the material in cladding systems used on buildings over 18 metres in height should be of limited combustibility, or have passed a robust full scale fire safety test. It should also be clear that desktop studies are not acceptable as evidence of compliance with Building Regulations.
- Social housing providers are acting to protect residents. While some private landlords are doing the same, there is a significant issue with private landlords who are reluctant to act, are passing charges onto leaseholders, or sometimes cannot be identified.
- Prompt action is required to address shortcomings in legislation that are hampering efforts by councils and fire services to identify landlords and require them to undertake remedial work. It is likely that short term changes to guidance can assist but there is a need to revise the current law.

Background

Causes of some building fire risks

While the detailed causes of the appalling fire at Grenfell Tower are still being investigated, it is now clear that it, and many other socially and privately owned tower blocks, have cladding systems that are dangerous.

Typically these cladding systems consist of insulation (which sits flush to the original wall) and cladding panels, with a gap between the cladding and insulation for ventilation (to avoid damp). This gap can act as a chimney in the event of a fire and so fire breaks are installed horizontally and vertically. The horizontal ones consist of intumescent strips which are normally 'open' but which close to form a fire break when heated.

This danger stems from three elements of the system:

- Flammable cladding: in particular Aluminium Composite Material (ACM) cladding with a plastic core (PE or FR).
- Flammable insulation: foam rather than mineral wool.
- The chimney effect.

Briefing

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Testing for fire risks

The guidance on the relevant part of the building regulations (Approved Document B) states that materials used on buildings over 18 metres must either be of limited combustibility or be part of a system that has passed the BS 8414 test and been shown to comply with the relevant BR135 criteria. This test involves constructing cladding on a test wall, setting a fire underneath it and seeing how long it takes for the fire to spread.

Over time the industry has developed a tendency to use desktop studies based on the results of BS 8414 tests to judge whether cladding systems meet the BR 135 criteria rather than actually testing systems.

The Ministry of Housing, Communities and Local Government (MHCLG) carried out tests over the summer which demonstrated that ACM cladding with a Polyurethane core (PE) could not meet the requirements of the building regulations, irrespective of the form of insulation used and that ACM cladding with a fire retardant core (FR) could not meet the building regulations when used with foam insulation.

The failed combinations of cladding and insulation have been found on 301 buildings over 18 metres high, including 158 social housing buildings (45 managed by 15 local authorities; the rest managed by housing associations); 130 private sector residential buildings, including hotels and student accommodation; and 13 hospitals and schools.

Of the 158 social housing buildings judged to have failed large-scale system tests, 92 have started remediation, of which seven have finished the job.ⁱ

MHCLG has asked councils to identify all private high-rise blocks in their area that have or are suspected of having ACM (PE) or (FR) cladding. This process is ongoing; some councils are dealing with very large numbers of buildings, and are often encountering difficulties in identifying whether these sorts of ACM cladding are present

Mitigation and remedial measures

Where blocks are suspected of having or shown to have dangerous cladding systems, the local fire and rescue service inspects and recommends mitigation measures that can be taken to reduce the risk to residents. These are likely to include a change to evacuation rather than 'stay put' response to fire accompanied by new alarm systems or a waking watch.ⁱⁱ

In the long term remedial measures, removing the cladding system and replacing it, are the only solution.

As the above figures demonstrate something has gone seriously wrong with the system of building regulation. Attempts to deal with the consequences of that failure have demonstrated the need for improved regulation of fire safety under the Regulatory Reform (Fire Safety) Order 2005 and/or the Housing Act 2004.

The Independent Review of Building Regulations and Fire Safety was established under Dame Judith Hackitt to address these issues and is expected to report before the summer.

Current challenges for local government

Remedial measures

The Government has yet to issue clear guidance on what materials are acceptable to use in replacing dangerous cladding systems. This is causing difficulties for social landlords seeking to replace dangerous cladding.

These difficulties are reported to have been enhanced by the inflation of costs for materials and scaffolding. We understand one council's original estimates for removing and replacing the cladding on their blocks have almost tripled.

The LGA has serious concerns that ACM is not the only dangerous cladding material in use and has urged MHCLG to test other materials.

Doubts have also been expressed as to the reliability of the BS 8414 test which can be used to approve cladding systems that incorporate combustible materials.

The Royal Institute of British Architects (RIBA) has said that it: *'doesn't believe that there should be any place for any form of desktop study methods of assessing the fire performance of external wall construction in the future. For buildings over 18 metres in height the RIBA recommendation is that external wall construction should be comprised of non-combustible (European Class A1) materials only'*.ⁱⁱⁱ

Privately owned buildings

Councils face challenges in identifying privately owned buildings with dangerous cladding systems and ensuring that owners introduce mitigation and remediation measures.

The task of identifying buildings with cladding that may be ACM is an extremely large one in some areas. After prolonged lobbying by the LGA and London Councils, MHCLG announced a £1 million fund to assist those councils with particularly large numbers of buildings on 1 March 2018.

Once buildings have been identified as potentially having dangerous cladding, councils have to identify their owners. This is not simple and there are still a significant number of buildings whose ownership is unclear. In many other cases owners are registered overseas, making enforcement action difficult and the chances of recovering costs, if councils have to do remediation work themselves, small.

MHCLG has encouraged councils to use the Housing Act to take enforcement action. This is a new field of enforcement and the LGA and London Councils are currently in discussion with MHCLG over councils' support needs in respect of enforcement action to identify and correct any dangerous cladding.

Action has been hampered by a lack of clarity over the powers conferred by legislation and over the respective roles of the Fire Safety Order and the Housing Act. The problem of dangerous cladding ought to have been avoided at the construction stage. Neither the Housing Act or the Fire Safety Order was designed with this issue in mind. Nonetheless, environmental health teams and fire and rescue services are currently working together effectively. It is clear that a multi-disciplinary approach will continue to be required going forwards.

In the short term it may be necessary to review guidance issued under the Housing Act and Fire Safety Order to facilitate effective enforcement. The

Housing Health and Safety Rating System (used to identify hazards that require enforcement action) may need updating to take account of what we now know about the risks posed by cladding systems.

In the long term it will be necessary to reform the fire safety arrangements for high rise buildings (as well as for some other buildings, including buildings with vulnerable residents) so that the fire safety enforcement role sits clearly with the fire and rescue services. This will ensure a holistic approach to fire safety in high rise buildings can be established bringing together the internal shared spaces, issues which may breach compartmentation, and external cladding. This is likely to require legislation and an expansion of the role of the fire and rescue service.

Resources

A consistent element across all these necessary changes is the need for proper resourcing for those involved in inspecting and enforcing against the building and fire safety regulations. Unless these changes are properly resourced, councils and fire and rescue services will be unable to play their vitally important part in delivering the cultural and behavioural change needed across the construction sector.

In private blocks, the cost of both mitigation and remediation measures could end up being passed on to leaseholders. The Secretary of State has appealed to building owners not to pass costs on and there are ongoing legal challenges to landlords' attempts to do so, but as things stand it appears that owners are able to pass on these costs legally and many are likely to do so.

The chances of leaseholders being able to organise to identify and sue the guilty parties seem slim. Even if they do, those responsible for installing dangerous cladding are likely to go out of business without paying up. These scenarios are likely to lead to leaseholders becoming homeless and to councils having to take responsibility for rehousing them. Enforcement action alone cannot solve these problems and needs to be discussed as part of a wider strategy.

ⁱ MHCLG figures to 16/2/18,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684206/February_Data_Release.pdf

ⁱⁱ In many high rise blocks residents are advised to stay in their flats if a fire breaks out because the block is designed on the 'compartmentation' principle. Compartmentation relies on fire-proof barriers between flats and stairwells etc (such as solid walls or fire doors) to ensure that a fire will be contained for long enough to allow the fire service to arrive and put it out, before it can spread. Flammable cladding breaches compartmentation.

ⁱⁱⁱ <https://www.insidehousing.co.uk/news/news/plan-to-include-specific-desktop-study-route-in-fire-safety-guidance-criticised-55006>