

LGA response to consultation on Amendments to statutory guidance on assessments in lieu of test in Approved Document B (Fire Safety)

May 2018

Key points

- **The LGA welcomes the opportunity to comment on the use of desktop studies (sometimes referred to as assessments in lieu of test).**
- **The Grenfell Tower fire has exposed the inadequacy of the system by which assurance is provided that cladding systems are safe.**
- **As long as desktop studies are permitted, we cannot guarantee there will not be another Grenfell-style fire. This can only be achieved by banning the use of flammable materials on buildings over 18m.**
- **The LGA believes desktop studies should be banned.**

About the LGA

1. The Local Government Association (LGA) is the national voice of local government. We work with councils and fire and rescue authorities to support, promote and improve local government.
2. We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to local authorities so they are able to deliver local solutions to national problems.

Answers to Questions

3. **Do you agree with the recommendation in Dame Judith Hackitt's interim report to restrict the use of desktop studies to ensure that they are only used where appropriate and with sufficient, relevant test evidence by people with suitable competence? If no, please provide reasons and suggest an alternative approach.**
 - 3.1. Dame Judith's Interim report rightly focussed on the inadequacies of desktop studies in relation to cladding systems. The LGA's view is that there are no circumstances in which it is appropriate to use desktop studies. Their use should be prohibited in relation to cladding systems and should only be allowed in relation to other fire safety issues where it is proved that they can guarantee a safe outcome.
 - 3.2. The purpose of both the BS 8414 tests of cladding systems and assessments in lieu of tests is to ensure that cladding systems comply with the requirement in the building regulations that

The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building

3.3. The LGA does not believe that the BS 8414 tests can be relied upon to achieve the requirement of the regulations, for the following reasons:

3.3.1. The test does not adequately reflect real-world conditions, such as the effect of changes in air pressure at the top of high rise blocks on a fire in the cavity of a cladding system. The test does not replicate the spread of fire through holes in the walls made by ducts and tubes which can mean a fire can spread into the interior of a cladding system; nor does it replicate the effects of a fire in which 20 per cent of the fuel is plastic. The latter shortcoming was exposed in tests carried out by the Fire Protection Association on behalf of the Association of British Insurers. The FPA concluded that

the BS 8414 test may not give designers, specifiers or insurers confidence that cladding systems tested to it will ensure the level of building fire safety that is currently inferred by its use.¹

3.3.2. The test is conducted on a perfectly constructed cladding system but in the real world we know that systems are not necessarily perfectly constructed. In particular the BRE analysis of Grenfell Tower showed that cavity barriers were not properly installed. We are aware of evidence suggesting this is a common problem. The entire fire performance of a cladding system is dependent on the effective operation of cavity barriers.

3.3.3. Several allegations have been made that desktop studies can be gamed by manufacturers to produce misleading results. These include allegations made on Panorama (21.5.2018), admissions by Cellotex and BRE.² and allegations made by Rockwool about the conduct of tests commissioned by the Ministry.³ At the very least it would be foolish to assume the 8414 test can be relied upon until thorough inquiries have been conducted into these allegations.

3.4. We believe that it will never be possible to completely eradicate gaming of the BS 8414 test, although we accept that third party accreditation of products used and other measures could make this more difficult than has been the case to date.

3.5. Even if these problems were resolved, we do not believe it would be possible to ensure that the tests can fully take account of the poor installation work that seems to typify the industry and which will take years to eradicate, nor can we be confident that the test will take account of other real-world conditions.

3.6. If the results of BS 8414 tests cannot be relied upon it follows that assessments in lieu of test, which rely on data from BS 8414 tests, cannot be relied upon either.

3.7. Even if the BS 8414 test could be relied upon, we would still not support the continued use of assessments in lieu of tests. It is very hard to predict how materials will behave in a fire by modelling on a computer with a level of accuracy that can be

¹ <https://www.abi.org.uk/globalassets/files/publications/public/property/2018/04/abi-cladding-systems-research-report-2018-04-19.pdf>

² <https://www.insidehousing.co.uk/news/news/bre-withdraws-safety-test-result-for-grenfell-insulation-54390>

³ <https://www.insidehousing.co.uk/news/news/cladding-tests-questioned-by-insulation-firm-54247>

relied upon with complete certainty. We believe it is impossible to prove that desktop studies will always deliver a safe result.

- 3.8. Moreover, it is clear to us that desktop studies have previously provided an opportunity for some manufacturers to game the system and encourage the use of materials that should not have formed part of cladding systems on buildings over 18m and of systems that are unsafe. Any reform that allows the continued use of desktop studies runs an unacceptable risk that this practice will resume once public concern in the wake of the Grenfell Tower fire has subsided and unscrupulous manufacturers think they can get away with it.
- 3.9. The increased use of BS 8414 tests since the Grenfell Tower fire suggests to us that the industry recognises the inherent unreliability of desktop studies.
- 3.10. Whether or not the system used at Grenfell Tower had passed a desktop study, we think it is likely that the use of desktop studies contributed significantly to the development of a confused and confusing set of arrangements around the safety of cladding systems which resulted in the erection of unsafe cladding systems on several buildings.
- 3.11. The system for ensuring cladding systems are safe has failed catastrophically and many people have died or have suffered greatly as a result. Residents in over 300 other blocks have been put at risk. In fixing the system we must err on the side of safety, if we are to err at all. This is not simply a question of what is safe, but of what makes people feel safe in their homes, which we consider a basic human right.
- 3.12. The consequences of failure when assessing the safety of cladding systems are simply too serious to allow any risk of error. The Secretary of State has rightly said that unless this consultation can demonstrate that desktop studies will produce safe systems, then they should be prohibited. We support that approach.
- 3.13. Our proposed alternative approach is to apply the principles used in managing other risks.
- 3.14. The Health and Safety Executive's advice on the hierarchy of controls for managing risks in the workplace states that the first step in managing risk is
- 'Elimination - Redesign the job or substitute a substance so that the hazard is removed or eliminated.'⁴
- and that mitigation of risk should only be considered if it is not reasonably practicable to eliminate the risk. The LGA's view is that the risk of excessive fire spread via cladding systems can be almost entirely removed by using only non-combustible materials in cladding systems.
- 3.15. Such an approach would render the existing system of BS 8414 tests and assessments in lieu of tests redundant. It might be still be necessary to test the

⁴ <http://www.hse.gov.uk/risk/faq.htm#hierarchy>

performance of cavities in cladding systems with a view to ensuring against the chimney effect, but in the absence of fuel in cladding systems, we think this would be a far simpler and more reliable process, with the result not only that residents are safer but that they feel safer too.

4. Do you agree with the proposed amendment to the text on how to undertake an assessment in lieu of test as outlined in Annex A? If no, please provide reasons and suggest alternative text.

4.1. We do not agree that this text will achieve the aim set out in Dame Judith Hackitt's interim report.

4.2. That report drew attention to the need to improve the clarity of and to simplify Approved Document B in order to make it more user-friendly. This text appears to us to suffer from the same lack of clarity and simplicity that Dame Judith criticised in the existing document.

4.3. It seems clear to us that the multiplicity of routes to compliance for cladding systems to date has facilitated the installation of dangerous systems on so many blocks. Yet this text again offers multiple routes to compliance (three, in the first paragraph). Furthermore, we think this multiplicity of routes is likely to encourage the use of assessments in lieu of test.

4.4. Our critique of BS 8414 rests to a large extent on the dramatic differences that can be produced in system performance by relatively small changes to the installation of a system. The consultation document acknowledges this but offers no sensible analysis of how these small but significant changes can be taken into account in a desktop study.

4.5. Our suggested alternative test is:

'Assessments in lieu of test may not be used to establish the fire safety of products or systems. Only non-combustible products may be used in cladding systems on buildings over 18m in height'.

5. Do you agree with the proposed amendment to the text on who is permitted to undertake an assessment in lieu of test as outlined in Annex A? If no, please provide reasons and suggest alternative text.

5.1. We do not agree. Assessments in lieu of test should not be carried out for reasons set out elsewhere in this response. It follows that we do not think anyone should be authorised to conduct them.

5.2. Our suggested alternative test is:

'Assessments in lieu of test may not be used to establish the fire safety of products or systems. Only non-combustible products may be used in cladding systems on buildings over 18m in height'.

6. Do you agree with the proposed amendment to the text on the circumstances under which an assessment in lieu of test may be carried out, as outlined in Annex A? If no, please provide reasons and suggest alternative text.

6.1. We do not agree and we are confused by this question. The proposed text does not appear to us to say anything about the circumstances in which such a test should be carried out, merely that where there is no specific standard for conducting an assessment in lieu of a test the principles in BS EN 15725:2010 should be used.

6.2. Our suggested alternative test is:

'Assessments in lieu of test may not be used to establish the fire safety of products or systems. Only non-combustible products may be used in cladding systems on buildings over 18m in height'.

7. Do you agree with the impact assessment? If no, please provide evidence.

7.1. No comment

8. The impact assessment is principally focused on external wall construction. Do you consider it will impact any other building features? If yes, please specify

8.1. No comment

9. Do you think that making this change will achieve the desired outcome expressed in Dame Judith Hackitt's interim recommendation? If not, please explain why and suggest alternatives.

9.1. No. We suspect that the changes proposed will not significantly restrict the use of desktop studies.

9.2. We take this view because it is clear to us that desktop studies have previously provided an opportunity for some manufacturers to game the system and as discussed in paragraph 3.8 above, allowing their continued use risks a continuation or resumption of that practice.

9.3. While this risk is inherent in the proposal to allow the continued use of assessments in lieu of test, the text referred to in Question 4, increases it for the reasons set out in our answer to that question.

9.4. We also believe that the proposed reform will not reduce the use of desktop studies because the impact assessment that accompanies this consultation says so. In fact it says that the proposed reform is likely to increase their use. We are at a loss to understand why the Government has consulted on a measure it appears to believe will fail.

9.5. We can think of no more effective way of restricting the use of desktop studies than preventing people from using them. That is our proposed alternative

10. Do you consider that the use of assessments in lieu of fire tests should be prohibited for all construction products? Please provide an explanation of your answer.

10.1. We have not considered in detail other areas in which desktop studies are used. However we suggest that if the lessons of Grenfell are to be fully learned, the same test the Secretary of State has set out in relation to cladding systems should

be applied to all safety-critical situations in which desktop studies are used (i.e. they should not be used unless it can be proved that this is safe) and that the principles of the HSE's hierarchy of controls (set out above in paragraph 3.14) should also be applied in those situations.

11. Do you consider that the use of assessments in lieu of fire tests should be prohibited for wall systems tested to BS 8414? Please provide an explanation of your answer.

11.1. Yes.

11.2. Our explanation is contained in paragraphs 3.1 – 3.15 above.

12. Do you have further comments?

12.1. We note with dismay that this consultation sets out a detailed proposal which the impact assessment indicates is expected to result in an increase in the number of assessments in lieu of test, but fails to seriously propose an outright ban, referring to this proposal almost as an afterthought.

12.2. The commercially confidential nature of BS 8414 test results and desktop studies creates a lack of transparency which has proved unhelpful both in identifying and addressing safety issues in buildings since June 2017 and in addressing the need for revisions to policy. If the Government decides to persist in allowing flammable material to be used in cladding systems we urge the Secretary of State to ensure this secrecy is brought to an end.