29 September 2017

Dear Bob

Building Regulations and Fire Safety in Scotland

Following Wednesday’s meeting of the Local Government and Communities Committee I agreed to write to you to share information and provide further detail on a number of issues.

Inventory of high rise domestic buildings

The Ministerial Working Group on building and fire safety has commissioned an inventory of the design of high rise domestic buildings in Scotland. The aim of this work is to compile an inventory of existing high rise domestic buildings to:

- determine the active and passive fire safety measures present in existing high rise domestic buildings;
- inform future thinking about retrofit of sprinklers or alternative measures;
- determine if the existing structure has been over clad using an External Wall Insulation System (EWI); and
- where over cladding has been carried out determine when and what type of over cladding system has been used.

The findings from this work will be used to inform the considerations of the Ministerial Working Group.

Procedural information on dangerous and defective buildings

The procedural handbook explains the procedures set up by the Building (Scotland) Act 2003 and the Building (Procedure) (Scotland) Regulations 2004.

The purpose of the handbook is to clarify the intent of the procedure regulations and expand upon the procedures set out by the Act. Unlike the technical handbooks and other guidance documents issued by Scottish Ministers to support the building regulations, this handbook
Section 7 covers Compliance and Enforcement – 7.3 covers Building warrant enforcement notices (under section 27 of the Act) and includes a relevant flow chart. Section 10 covers Dangerous buildings (under section 29 and 30 of the Act) and includes a relevant flow chart. Section 11 covers Defective buildings (under section 28 of the Act) and includes a relevant flow chart. I have added these flow charts at Annex A.

Scottish Government’s work on public procurement

The Committee was interested in the procurement of large public sector construction contracts and the role of clerk of works. I agreed to provide an update on a range of issues being taken forward in relation to construction.

On 19 September I hosted a Ministerial Summit with contracting authorities, senior industry representatives, construction related professions and the Fair Work Convention. The Summit concluded three priority areas that will be jointly progressed.

First, it was agreed that working together we will actively promote quality assurance by reviewing and adapting tendering, evaluation and on-site management practice that places quality assurance at the heart of operations, alongside site health and safety.

Second, it was agreed that we should define clear personal and professional responsibilities of those commissioning, procuring, delivering and managing public works projects. While structured process and risk analysis can inform decision making, those responsible must have the appropriate authority and understand the impact and contribution of their decisions.

Finally, we agreed to further develop work started during the implementation of the recommendations of the Construction Procurement Review to help ensure that the appropriate skills, experience and awareness are in place in public bodies, construction firms and their sub-contractors to deliver Scotland’s built environment.

Specifically in relation to the role of a Clerk of Works and their influence on quality assurance, The Scottish Government issued interim guidance in July covering site inspection and assurance. Contracting Authorities, industry and Professor John Cole were all consulted in the development of this guidance. This was welcomed by industry representatives at the Summit.

Scottish Government along with the industry and professions at large recognise the importance of appropriate site inspection and assurance. Alongside engineers, architects, surveyors and other professionals the Clerk of Works role can help deliver project assurance. For large, complex public construction works a blend of inspection and assurance skills are required. Government, Industry and the construction professions have all agreed to work collaboratively to develop more detailed best practice guidance this year.

I am aware that time was limited for discussion on some matters previously raised to the Committee by the FBU on which the Committee would welcome my views.
Fire safety assessment before completion

Scottish Fire and Rescue Service are consultees under regulation 11 of the **The Building (Procedure) (Scotland) Regulations 2004** and as such are consulted on the warrant applications for certain categories of buildings. These include:

- non-domestic residential buildings
- non-domestic, non-residential buildings where the design is not in accordance with the guidance issued by the Scottish Ministers
- domestic buildings with a storey height over 18 metres
- domestic buildings with a storey height over 7.5 metres, up to 18 metres, where the design is not in accordance with guidance issued by the Scottish Ministers

During the consultation process the SFRS will make comments on the warrant design application with regards to fire and may also highlight issues where the completed buildings may not reach the required benchmarks of the sector specific guides for fire safety, issued by the Scottish Government. Currently, the SFRS are not responsible for, or involved in, the verification process however local authority verifiers should consider the comments from the SFRS when considering warrant approval.

Going forward the Ministerial Working Group will consider as part of the review of building standards fire safety the option to broaden SFRS’s role in the verification of buildings prior to the issue of a completion certificate.

**Standardised national fire risk assessment**

The FBU appear to be looking for comparisons of fire risk assessments against those which have been found to be deficient within England. There is currently no legislative requirement for a fire risk assessment to be undertaken in domestic premises, including sheltered housing and multi storey flats under the Fire (Scotland) Act 2005 and its associated Regulations. Whilst there are requirements to maintain facilities provided for firefighters in common areas of properties, such as rising mains, firefighting lifts, lobbies etc where they are already provided, there is no retrospective requirements to upgrade to current standards.

There are a small number of Local Authorities that have undertaken a fire risk assessment on their high rise premises and we, and SFRS, acknowledge and support that as good practice. The outcome of such risk assessment is completely within their own control as to implementation of findings, and SFRS has no powers or input into these.

Fire risk assessments for "Relevant Premises" vary in design and methodologies. In having a standardised form to complete, this could potentially lead to a narrowing of the flexibility within the legislation and result in poorer fire assessments being carried out or indeed checklists being developed with no reasoning behind what the checklist should contain. SFRS take an overarching view of all assessments during their audits and consider whether the assessment meets the needs of the regulations in addressing fire safety measures. It has been acknowledged that a number of these have been inadequate and measures by SFRS officers have been taken to educate and support in achieving compliance as a result.

In addition, SFRS, alongside the Scottish Government and representatives from the fire industry, have been working to promote the use of risk assessors who have been through a process to confirm competency. SFRS are proactively recommending that where a duty holder seeks the services of a Fire Risk Assessor, that they consider reference to a
Intrusive inspections

The FBU appear to be referring to inspections carried out in London high rise blocks following the Grenfell tragedy, and specifically the issues identified within Camden tower blocks. The circumstances involved in these cases are unique, in so much as the building was fully clad in ACM, and had significant and serious internal structural and fire safety management compliance issues. To date no such issues have been identified in Scotland. Fire Safety Legislation, and the powers afforded to the fire service, differs in England from Scotland. Significantly, the English fire services have statutory powers within high rise blocks to undertake formal fire safety inspections and take necessary enforcement action, including prohibiting the use of the building.

SFRS currently have no legislative powers to undertake any form of formal fire safety inspection within high rise domestic premises. SFRS can look, from a legislative perspective, at high rise properties but only at the areas provided for the protection of firefighters. In regard to the FBU's call for ‘intrusive inspections’, aside from the legislative restrictions, SFRS do not have the expertise or competence to scrutinise building materials, fire separation or structural integrity of high rise domestic buildings. This would be done by experts competent in this area. In terms of on-going fire safety within such premises, SFRS provide advice and guidance to residents through their programme of Home Fire Safety Visits.

In addition, SFRS deploys operational personnel on a quarterly basis to visit all high rise domestic premises, primarily for familiarisation purposes. This allows operational crews to familiarise themselves with these premises and provide defect reports to building owners or those responsible for the buildings. Operational fire crews will report on measures relating to firefighter safety such as fire doors, dry risers, firefighting lifts, any smoke control measures, access issues or storage of combustible materials.

The ongoing work of the Ministerial Working Group, in relation to the regulatory framework for the role of SFRS in the above, will consider the role of the SFRS in assessing fire risk in high rise domestic buildings as well as a national standard assessment. This will encapsulate the points raised by the FBU to the Committee.

I hope this information is helpful and provides some detail on the wide range of work being taken forward on building standards and fire safety. I am conscious that the committee also wanted to see the remits of review of Building Standards (fire safety) Scotland and review of Buildings Regulations Compliance and Enforcement. I will publish these and send copies to the Committee as soon as the remits are finalised with the newly appointed Chairs. As previously stated, I will continue to proactively update the committee on the work of the Ministerial Working Group going forward.

Kind regards

KEVIN STEWART
Annex A

**PROCESS APPLYING TO BUILDING REGULATION COMPLIANCE NOTICES**

Scottish Ministers consider that a certain type of existing building should be required to comply with a provision of the building regulations

Scottish Ministers direct local authorities to secure that buildings of prescribed type comply

Local authorities must serve a compliance notice on owners of buildings of the prescribed type identified in the direction and may serve a notice on any other building of the prescribed type that appears not to comply

Owner fulfils notice by applying for building warrant and carrying out the necessary work

Owner does not fulfil notice – guilty of an offence

Owner and local authority may agree building complies – notice withdrawn

Owner appeals to sheriff

Sheriff rejects appeal – enforcement action reinstated

Local authority may carry out necessary work and recover costs from the owner.
LA may make a charging order

Local authority may not do the work but the owner may be penalised by outstanding notice at the time of sale

Sheriff upholds appeal – no further action
PROCEDURES RELATING TO A DANGEROUS BUILDING

Local Authority (LA) becomes aware of potentially dangerous building

- LA inspects building to determine the extent of the danger, if any, to occupiers or general public

  - Building not dangerous, no action required
    - LA involvement ceases
    - Danger removed, no further action required
      - Owner does not begin or does not complete work as specified – guilty of an offence
        - LA may carry out work then recover expense
        - LA must register a completion certificate (4) then recover expenses. (5)
          - LA may make a charging order (6)

  - Building immediately dangerous, urgent action required (1)
    - LA takes necessary action to remove the immediate danger
      - Further work necessary to reduce or remove danger
        - If work not carried out, notice remains on BSR

  - Building dangerous, urgent action not required (1)
    - LA must serve a dangerous building notice (2)(3)
      - Owner begins work and completes work as specified
      - Owner submits a completion certificate to a verifier