LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

21st Meeting, 2017 (Session 5)

Wednesday 13 September 2017

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Building regulations and fire safety in Scotland**: The Committee will take evidence from—
   
   David Stewart, Policy Lead, Scottish Federation of Housing Associations;
   
   Kenny McKenzie, Royal Institution of Chartered Surveyors in Scotland;
   
   Denise Christie, Regional Treasurer, Fire Brigades Union Scotland.

2. **Subordinate legislation**: The Committee will consider the following negative instrument—
   

3. **Consideration of evidence (in private)**: The Committee will consider the evidence heard at agenda item 1.

4. **Building regulations and fire safety in Scotland (in private)**: The Committee will consider a draft report.

Jane Williams

Clerk to the Local Government and Communities Committee

Room T3.60

The Scottish Parliament

Edinburgh

Tel: 0131 348 5232

Email: jane.williams@parliament.scot
The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk
LGC/S5/17/21/1

PRIVATE PAPER
LGC/S5/17/21/2
(P)

PRIVATE PAPER
LGC/S5/17/21/3
(P)

**Agenda item 2**

Note by the Clerk
LGC/S5/17/21/4

**Agenda item 3**

PRIVATE PAPER
LGC/S5/17/21/5
(P)

PRIVATE PAPER
LGC/S5/17/21/6
(P)
Local Government and Communities Committee

21st Meeting 2017 (Session 5), Wednesday 13 September 2017

Building Regulations and Fire Safety in Scotland: Note by the Clerk

Purpose

1. This paper provides background information on the Committee’s inquiry into Building regulations and fire safety in Scotland.

Background

2. On 1 February 2017, the Local Government and Communities Committee agreed to undertake an inquiry into the building standards verification process.

3. The Committee issued a call for written views on 7 February 2017, which closed on 28 February 2017 having received 33 responses. In addition, an online survey was launched by the Committee which attracted 1,072 responses. The written views, summary of written views and the analysis of the online responses can be found online.

Local Government and Communities Committee Consideration

4. The Committee then held an informal meeting with individuals who had experienced the building wants process, following by two evidence sessions:

On 3 May 2017, the Committee took evidence from the following:

- Nicola Barclay, Chief Executive, Homes for Scotland;
- Malcolm McLeod, Director, NHBC Scotland;
- Stephen Kemp, President, Scottish Building Federation;
- Dave Aitken, Local Authority Building Standards Scotland;
- Jim Gilmour, Board Member, Federation of Master Builders Scotland.

Link to papers for meeting on 3 May 2017
Official Report of meeting on 3 May 2017

On 14 June 2017, the Committee took evidence from the following:

- Ross MacKay, Convener, Property Law Committee, Law Society of Scotland;
- Kenny McKenzie, Royal Institution of Chartered Surveyors in Scotland;
- Gilly Carr, President Elect, Institute of Clerks of Works and Construction Inspectorate of Great Britain;
- Glenn Campbell, Building Standards Manager, Highland Council.

Link to papers for meeting on 14 June 2017
Official Report of meeting on 14 June 2017
5. Following the tragic fire at Grenfell Tower in London, the Committee agreed at its meeting on 21 June to widen its ongoing scrutiny of building regulations in Scotland to include the fire safety aspects of these regulations.

6. At its meeting on 13 September, the Committee will take evidence from:
   a. Scottish Federation of Housing Associations (SFHA)
   b. Royal Institute of Chartered Surveyors in Scotland (RICS)
   c. Fire Brigades Union (FBUS)

7. Written submissions from SFHA and the FBUS are attached in Annexe A.

Next Steps

8. The Committee will take evidence on building regulations and fire safety in Scotland from COSLA, Local Authority Building Standards Scotland (LABSS) and Glasgow City Council at its meeting on 20 September. At its meeting on 27 September the Committee will take evidence from the Minister for Local Government and Housing.

9. The Committee will also consider a draft report on the issues raised.
Written Submission from the Scottish Federation of Housing Associations

The SFHA leads, represents and supports Scotland’s housing associations and co-operatives. We want to see a thriving housing association and co-operative sector providing sustainable and affordable homes.

Housing associations and co-operatives are not for profit organisations, most of whom are charities, who exist to provide affordable housing to those in greatest need and to benefit their communities.

Housing associations have a strong track record in engaging with their communities and tenants – many were set up to take over either failing private rented housing or low demand housing in peripheral estates and associations have focussed managing and maintaining these homes for the benefit of their tenants.

Many housing associations have tenant representatives on their management committees and boards.

Housing associations have a strong track record in providing a quality service to their tenants – for example they have the most energy efficient homes by tenure in Scotland¹.

Executive Summary

Following the Grenfell Tower tragedy SFHA surveyed members asking a number of questions about their properties insulation materials, fire safety, and on advice and information provided to tenants in multi story flats.

While we are not complacent we were reassured by the responses - including information that housing associations held on their high rise properties such as insulation work carried out, on close working relationships with the fire service (including regular inspections of multis), and by information communicated to tenants immediately following Grenfell.

The SFHA has been involved in a Scottish Government Working Group looking at fire safety in social housing following Grenfell. This group feeds into the Ministerial Working Group on Fire Safety, which established that no social housing in Scotland has aluminium composite cladding such as that found in Grenfell.

The group has also been developing proposals for a consultation for a common Fire Safety Standard in housing of all tenures. The consultation is expected to open in September and we will consult fully with members before responding. We welcome the chance to consider best practice in safety.

One issue that has arisen from members following the Grenfell tragedy is that where properties within blocks are purchased by owner occupiers or private landlords, fire doors are often removed and replaced with doors that aren’t fire rated. We believe this issue must be considered in any review of fire safety.

Following the Grenfell fire tragedy tenant involvement is particularly important.

Following the Grenfell tragedy the SFHA surveyed members on issues such as insulation of high rise buildings, liaison with the Fire Service and communication with tenants.

Of the associations who responded, all of the insulation fitted complied with Scottish Building Standards and none was aluminium composite.

Housing associations also provided other details of fire safety – including regular (quarterly) visits to multis from the Fire Service, checks on dry risers by concierge staff and recently commissioned Fire Safety Assessments.

Housing associations also shared information that they had provided to tenants on fire safety and the safety of their homes following the Grenfell disaster whether through visits, newsletters, and their websites.

Housing associations also made tenants aware that the Fire Service offered free advisory home visits.

The SFHA has subsequently become involved in a Scottish Government Working Group looking at Fire Safety in Homes – this group is linked to the Ministerial Working Group on Fire Safety.

In consultation with the group the Scottish Government are developing proposed new standards on Fire Safety in housing, to be adopted across all tenures. The consultation is expected to open in September and to propose a common fire safety standard for all tenures of housing. SFHA will consult widely with our members on the proposals before responding.

While the consultation is expected to focus on fire alarms we also believe that the issue of fire doors being removed by owners and private landlords should be considered. Members have raised this, saying it could compromise the fire safety of buildings.
The Working Group is also in discussions on how to communicate on Fire Safety with tenants and to ensure that their views are heard during the consultation and beyond. We will work closely with the Scottish Government and other partners to ensure that the views of tenants are heard - this seems likely to be a major lesson from the Grenfell tragedy.
Written Submission from the Fire Brigades Union Scotland

1. Do you think current fire safety related Scottish building standards, and the guidance set out in technical handbooks, minimise the chance of fire starting while offering residents and building users sufficient time and means to escape when fire does occur?

Firstly, we would ask about the terminology used in this question: Building Standards are not typically intended to minimise the chance of fire starting. Fires start as a result of processes and actions that happen inside buildings. It is an important distinction that Building Standards are focussed on general fire precautions that are intended to minimise the spread of fire and minimise its impact in those in and around buildings.

Scottish building standards

The Scottish building standards were amended following a façade fire in Irvine, North Ayrshire in 1999, at which one person died and five people, including a 15 month old child, were rescued by firefighters.

It is as a result of this fire that the building standards currently require that:

“thermal insulation material situated or exposed within an external wall cavity, or in a cavity formed by external wall cladding, should be constructed of non-combustible materials”

This is in contrast to England where materials of (so called) “limited combustibility” may be used. It is believed that confusion caused by the term “limited combustibility” was one of the factors that led to unsuitable materials being adopted by the building industry in England and ultimately lead to the catastrophic combination of insulation and cladding used at Grenfell Tower.

The greater clarity provided by the Scottish Building Standards has meant that no such confusion exists here and the chances of a similar fire occurring in Scotland are indeed minimised.

In fact (in contrast to some in the English fire safety industry), since the Grenfell Tower fire the FBU has been campaigning for the same “non-combustible” clarity that exists in the Scottish Building Standard to be adopted by the English Building Regulations.

Having said that, in light of Grenfell Tower, the FBU would suggest that even greater clarity could be provided for the following reasons:
a. The aluminium faced cladding panels used on Grenfell Tower (and some other zinc plated steel cladding panels) are constructed with layer of polyethylene foam filling sandwiched between two metal faces. Polyethylene foam is particularly easy to ignite and burns ferociously. The question is, being situated between two sheets of metal, is this polyethylene foam considered to be “situated or exposed within an external wall cavity” and therefore prohibited in Scotland?

b. The main insulation used on Grenfell Tower is believed to have been PIR (polyisocyanurate). This material has unusual burning characteristics and is claimed by some in the plastic foam insulation industry to be “non-combustible”. Is there a commonly agreed status for the fire performance of PIR in Scotland? Is it considered to be combustible or non-combustible?

2. How the inspection and verification of safety critical elements of domestic building work could be improved, with a view to ensuring compliance with building standards requirements?

During building work, inspection and verification of safety critical elements is carried out by building control.

Once building work is completed and the building is occupied, the ongoing fire safety management of the building and maintenance of its safety critical elements falls to the fire and rescue service.

The problem is that there is no moment in time when a building is handed on from building control to the fire and rescue service. Very often, buildings are partially occupied before they are completed. Other times, they are completed but occupancy is delayed or occupancy builds up slowly over time. As a result, the fire and rescue service frequently do not know that a building has in effect been passed to them from building control.

What this means is that faults in safety critical aspects of the design can fall between the two stools of building control and fire and rescue service enforcement. i.e. Faults aren’t picked up by building control but the fire and rescue service assume that everything is perfect when they pick up a new building.

A solution would be to adopt a system that is used in other parts of the world whereby a building may not be occupied until all relevant enforcing authorities have undertaken a thorough inspection of the building to make sure that all safety/fire safety measures are as stated in the plan. In particular this would include the Local Authority Environmental Health Department, Building Control and the Scottish Fire and Rescue Service, though others may be involved in specific circumstances.

Of course, such a process could be simplified by the main contractor arranging frequent visits by the relevant authorities during construction, and inspections could be greatly assisted by photographic evidence.

However it would be achieved, focussing the verification of safety critical elements down into a single mandatory inspection after construction and before occupation
would make sure that shortcomings in the design and build process did not ‘slip through’ into the occupied building where rectification becomes far more complicated.

3. Your views on how fire risk assessments for high rise domestic buildings could be improved?

_Sizing up the problem_

Following the Grenfell Tower fire, London Fire Brigade officers carried out thorough, intrusive ‘inspections’ of the fire precautions of all their _clad_ high rise residential blocks.

Prior to this, they had only ever carried out ‘audits’. An audit being a read through of the fire risk assessment without any real in-depth questioning of how well it reflected reality, and a cursory look at the building fire precautions.

The ‘inspection’ rather than ‘audit’ process revealed some serious failures of fire safety, particularly in terms of fire compartmentation. In Camden, five tower blocks were evacuated on the recommendation of London Fire Brigade because the ‘thorough inspection’ revealed that compartmentation was so bad that London Fire Brigade _could not guarantee the safety of residents in case of fire_.

The point being while the Grenfell Tower fire itself may have been about cladding, the fall-out from the fire has revealed;

- Poor fire risk management of buildings allowing fire risks to appear;
- Serious problems with fire risk assessments that had failed to identify fire risks; and
- Inadequate enforcement procedures involving light touch ‘audits’ by fire officers that had failed to identify the problems with the fire risk assessments.

And of course, it is almost certainly true that the same problems exist in high rise residential blocks that are _not_ clad, and it also exists in buildings that are not high rise and residential. The question is, is the same true for buildings in Scotland?

So far, groups such as the ministerial working group have only considered the very narrow issue of combustible cladding as a risk that has been highlighted by Grenfell Tower. But the FBU would like this Committee to consider the wider issues that have been illuminated in the aftermath of the tragedy.

The conclusion that we can draw from London’s experience is that fire risk assessments of high rise domestic buildings could be very poor indeed, but unless we carry out some thorough intrusive inspections of our own, we won’t know the scale of the problem and we won’t know how to make improvements.

Further, if, like London, we find that fire risk assessments for high rise domestic buildings are bad, we then need to look at other premises like sheltered accommodation, boarding houses, hotels and so on.
But only once we have an idea of the scale of the problem can we have a view on methods of improvement. So, starting with high rise domestic buildings, how do we get an idea of the scale of the problem?

Answer: We do what London Fire Brigade did and task a small team of our best fire safety enforcement officers to sample high rise domestic buildings across Scotland at random and undertake thorough, intrusive ‘inspections’ of the fire precautions. Instruct them to report back on the standard of fire risk management, the standard of fire risk assessment, all based on the true standard of fire safety in these buildings. We then consider this report and decide what action (if any) needs to be taken to improve matters.

**Inspections and inspectors**

Building up a true picture of fire risk in the way described above is particularly necessary because there has been a great deal of change in Scotland’s fire and rescue service over recent years and a number of change factors have rendered an examination of statistics a somewhat unreliable source of information.

For one thing, it might be thought that a picture of the changing standard of fire safety could be built up from an examination of the number of fire safety inspections carried out by the Scottish Fire and Rescue Service and an examination of the amount of legal enforcement activity undertaken over a number of years.

However any examination of enforcement activity would be complicated by the fact that Scotland has lost 24% of its ‘uniformed’ fire safety inspecting officers since 2013/14, going down from 89 to only 68 for the whole country. At the same time, one ‘non-uniformed’ inspecting officer post has been lost taking the number down to 13.

FBU members who are fire safety inspecting officers tell us that today, they often do not have time to take the action that they would like to take when they find breaches of the legislation because they know that there are more serious breaches down the road that will demand their precious time.

The FBU believes that one way to improve the standard of fire risk assessment is to create more fire safety inspecting officer posts within the Scottish Fire and Rescue Service and to fill those posts by promoting firefighters who have knowledge and experience gained from witnessing real fires.

**4. How residents in high rise domestic buildings are encouraged to minimise fire safety risks and informed of how to react in case of fire?**

The FBU is well aware of the robust domestic fire safety campaign that has been undertaken by the Scottish Fire and rescue Service since the fire at Grenfell Tower.

Through the Service’s website, through leafleting and through home visits a great deal of effort has been put into informing residents of high rise buildings about their fire safety and how they should react in the event of fire.
General fire precautions and inspections of the insides of flats

However despite the best efforts of the Fire and Rescue Service to communicate with residents, not all will seek advice. And yet, lessons learned from the 2009 Lakanal House fire and the most recent Grenfell Tower fire are that the lifestyles of some resident’s, and the ‘DIY’ work of some residents can contribute to the fire risk faced by all in a high rise building.

In addition to this, it is not uncommon for the management company/landlord of a block of flats to commission work inside flats that actually damages the fire precautions – typically the compartmentation between flats.

But if the residents of such flats do not ask for advice, the risk goes unnoticed by the fire and rescue service because the fire and rescue service can only enter flats if invited. Clearly a balance must be struck between the rights of residents to lead their own lives behind their own front doors, and the rights of their neighbours to live in safety, but it is the view of the FBU that in order to reach the ‘difficult to reach’, landlords, Housing Authorities, Social Services and Health Services all have a part to play in minimising the fire safety risks in high rise domestic buildings.

In addition to responding to the questions noted above, you would be welcome to include in your submission any further information that you think is relevant and would be helpful to the Committee in their scrutiny.

Fire research

It was mentioned above that the FBU is concerned that the focus of attention following the Grenfell Tower fire has been exclusively on cladding of high rise residential buildings. But cladding is only one “modern” building technique amongst many that have introduced additional fire risk into the built environment over recent years.

The FBU is concerned that we should not have to wait for another multi fatality fire before we address other known risks with the same vigour.

Fundamental research into the fire performance of modern building materials has been slashed south of the border in England which means that many of the materials coming onto the market (not least medium and high-rise timber framed buildings) have not been studied. The demands for better and better thermal insulation of buildings is driving innovation in the construction industry, but unfortunately, most of the best insulation materials are also easily ignited and very combustible but there is not the resource any more to study the risk.

Another casualty of cuts to fire research is that lessons are not being learned from fires in the UK or abroad.
By way of an example, one insulating technique used today is to cover a building with polystyrene panels, then spray apply concrete over the polystyrene. This technique is carried out with no thought to its fire safety in the UK, and yet a fire involving such a system killed seven people in a tower block in France in 2010.

It would be useful if, rather than just focus on cladding of high rise buildings, the Scottish Fire and Rescue Service and others would carry out some horizon scanning to look for other fire risks that have not yet materialised with such tragic consequences as Grenfell Tower and then would seek out sources of research and testing.

**Residential sprinklers**

Finally, it must be pointed out that had a residential sprinkler system been fitted to Grenfell Tower, the initial fire that spread from a fourth floor kitchen to ignite the cladding would never have got beyond the fridge in which it started.

The FBU has previously recommended that Scotland should follow the example of Wales and pass legislation make the installation of sprinklers in all new dwellings compulsory.

We would like to take this opportunity to repeat that recommendation, but to suggest that if installation in every new dwelling is not considered feasible at this time, then at least sprinklers should be installed in every residential building over 18m in height.
Overview of instruments

1. The following instrument, subject to negative procedure, is being considered at agenda item 2 today’s meeting:

Procedure

2. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

3. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Background

The Energy Performance of Buildings (Scotland) Amendment Regulations 2017 (SSI 2017/225)


5. These Regulations increase the fees payable under regulation 10A of the 2008 Regulations in respect of the entering of the energy performance data onto the register. The fee is increased from £1.15 to £2.60 where the data relates to a dwelling and from £5.36 to £12.10 where the data relates to another type of
building or building unit. The policy note for this instrument is attached at Annexe A.

6. An electronic copy of the instrument is available at:


7. A Business and Regulatory Impact Assessment is available at:


8. There has been no motion to annul this instrument.

**Delegated Powers and Law Reform Committee Consideration**

9. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 5 September 2017 and determined it did not need to draw the attention of the Parliament on any grounds within its remit.

**Committee Consideration**

10. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on the instrument is **27 October 2017**.

11. The Committee is invited to consider the above instrument and whether it wishes to report on any issues to the Parliament in relation to it.
ANNEXE A

POLICY NOTE

THE ENERGY PERFORMANCE OF BUILDINGS (SCOTLAND) AMENDMENT REGULATIONS 2017

SSI 2017/225

1. The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

2. This instrument amends one aspect of The Energy Performance of Buildings (Scotland) Regulations 2008 (‘the 2008 regulations’) which transpose the EU Energy Performance of Buildings Directive.


   • a methodology for calculating the energy performance of buildings;
   • a system of energy certification of buildings; and
   • independent control systems for energy performance certificates and inspection reports.

4. In support of the transposition of the 2010 Directive, regulation 12 of The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012 introduced regulation 10A to the 2008 regulations which enabled the keeper of the register to charge certain fees for entering energy performance data onto the register.

5. This instrument amends the statutory fees chargeable for lodgement of energy performance data to the Scottish Energy Performance Certificate Register (SEPCR). The fee for lodgement of data for a domestic property is amended from £1.15 to £2.60 whilst the fee for lodging data for a non-domestic property is amended from £5.36 to £12.10. Annually, these fees are intended to fund the cost of operating and maintaining the Register.

Consultation

6. A consultation seeking views on the funding of the SEPCR and proposed changes to statutory fees took place between 8 May 2017 and 19 June 2017.

7. The consultation received 62 responses and confirmed support for the proposal to continue to fund the operation of SEPCR via the statutory lodgement fee and
to review that fee in the future. Responses also signalled a strong case for review of functions, facilities and governance of the register to demonstrate effectiveness and best value.

8. A consultation report was published on 27 June 2017 and is available from the Scottish Government Consultation website at


9. A full list of those notified of the consultation is recorded in the consultation document. All consultation responses from those who agreed to the publication of their response and the consultation document are also published at the weblink above.

Impact Assessments

10. A screening exercise was carried out to determine if action proposed would require a Strategic Environmental Assessment. This determined that proposals will result in ‘no or minimum environmental effects’ and that a Strategic Environmental Assessment is not required. This assessment can be viewed at

http://www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG.

11. It was determined that, due to the scope and subject matter, the following assessments were not applicable to the action proposed:

- Equality Impact Assessment
- Child Rights and Wellbeing Impact Assessment
- Privacy Impact Assessment

Financial Effects

12. A Business and Regulatory Impact Assessment (BRIA) has been completed and is available at http://consult.scotland.gov.uk/local-government-and-communities/scottish-energy-performance-certificate-register/ and alongside these regulations at www.legislation.gov.uk. This includes assessment of costs and benefits provided for by this instrument.

Scottish Government
Local Government and Communities Directorate
27 June 2017