Local Government and Communities Committee

Building Regulations and Fire Safety in Scotland

Cladding and Zero Valuations

1. The Grenfell tragedy brought fire safety to the fore in political agendas in all constituent parts of the UK.

2. Following Grenfell, and other fire-related events, MHCLG issued guidance that place new rules and regulations which will ensure tragic incidents such as these were limited, if not eradicated. However, the legislative response has challenged the basis of valuation of tall residential buildings, particularly in the context of reliance on statutory approvals to provide assurance regarding correct construction of hidden parts.

3. The aforementioned guidance – MHCLG Advice Note 14 (AN 14) – had mandatory implications for properties in England and Wales, but not Scotland, where it is the same general principles of AN 14 that apply.

4. The AN 14 covers the fire safety of external wall systems, and whether the building (or parts of the building in areas of common ownership) has flammable cladding.

5. The stand out issue is that those inspecting the properties i.e. chartered surveyors may not be able to identify flammable cladding by a simple visual inspection. According to AN 14, if clarity around cladding on properties in England and Wales is unavailable, then a nil value is applied to the property.

6. In Scotland, however, chartered surveyors undertaking a Home Report inspection on a property with cladding can propose a valuation, but with a caveat that the cladding must be addressed immediately.

7. The issue has been further compounded by buildings built to previous Building Regulations now known to include flammable materials.

8. This has led to many properties returning a zero valuation where cladding – of any sort – has been identified by a Chartered Surveyor undertaking a property inspection.

9. Housing sector stakeholders and participants have growing concerns that unless alleviated, this issue could bring the housing market to a standstill.
Differing Legislation and Regulations

10. Complexities around AN14 primarily arise from the differing Building Regulation systems in England and Wales, and Scotland, with local authorities and Scottish Ministers able use powers in the Building (Scotland) Act 2003 – outwith those stipulated in the advice note.

11. As an example, whilst Building Regulations are not retrospective, Scottish Ministers have the power to direct local authorities to require existing buildings to conform to current standards under Section 25 of the Act¹.

12. However, our understanding is that, to date, this power has only been used in terms of EPC and energy policy.

RICS activity on Lending Valuation

13. RICS acknowledged that for secured lending valuation purposes, without an ability to rely on statutory approvals, an alternative way of assessing value - where a building included an external wall system comprising possible combustible materials - was needed.

14. RICS has worked with sector stakeholder from across a wide range of interests to develop a process, in the public interest, to ensure safety of buildings remained at the forefront of valuation advice.

15. This workstream began as a collaborative effort with UK Finance and Buildings Societies Association, but other stakeholders are now involved in terms of providing endorsement of the approach, including ARMA, IRPM and MHCLG.

16. MHCLG have since agreed to provide Government endorsement in the area of valuation, and this is a welcome step.

17. From March 2019, RICS and sector stakeholders developed a process focusing on requiring the responsible entity to confirm compliance with MHCLG AN 14. Two processes with suggested wording existed covering England, Wales and Northern Ireland, and separately for Scotland, reflecting the aforementioned difference(s) in legislation.

18. RICS, in collaboration also worked with stakeholders to develop a process and proforma (Annex 1) to be created per building over 18m within the UK where external wall systems exist with possible combustible material.

19. The form has been developed in such a way to allow lesser risk buildings to be assessed by a wider range of fire experts with the most qualified experts focusing on the higher risk buildings.

20. Work is ongoing but the process and proforma is largely agreed. The go-live date is still to be agreed and is dependent on key decisions around PI and availability of suitably qualified experts and whether to resolve these areas before launch.

21. The launch will be joint across RICS, UKF, BSA, ARMA, IRPM and MHCLG with consistent messaging across all organisations.

22. LGCC, and Government, endorsement of the EWS form (annex 1) would be a welcome step.

Additional Issues

23. A further difficulty has arisen from the differing regimes. AN 14 stipulates that the use of cladding for new build property should be in place for properties above from 18m. In Scotland, the regulations stipulate 11m.

24. There is an added contestation in Scotland in the form of balconies. These are considered component parts of the building, and must be inspected for combustible material.

25. Both instances could mean Scotland needs further consideration of the impact that AN14 is having, and needs to be covered the EWS1 form (Annex 1)
Annex 1

EWS1: External Wall Fire Review

Objective - This form is intended for valuation purposes of residential apartment buildings where the highest floor is more than 18m above ground level or where specific concerns exist (Note 1). It should not be used for other purposes. It is to be completed by a competent person with the levels of expertise as described in Notes 2 and 3 below.

This review is for the sole and exclusive use of the client organisation named below. No responsibility is accepted to any third party for the whole or any part if its contents (Note 4). For the avoidance of doubt, the term 'third party' includes (but is not limited to): any lender who may see the review during the process through which they come to make a loan secured on any part of the Subject Address; and any prospective purchaser who may see the review during the process through which they come to purchase an interest in any part of the Subject Address.

Client organisation:……………………………………………………………

Subject Address (One form per block)

<table>
<thead>
<tr>
<th>Block or building name</th>
<th>Street</th>
<th>Town</th>
<th>Postcodes (all built)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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I confirm that I have used reasonable skill and care to investigate (Note 5) the primary external wall materials (typically insulation, filler materials and cladding) and attachments of the external walls of the above building/block.

OPTION A(Note 1) – Where external wall materials are unlikely to support combustion
I confirm that:
- I belong to one of the professions listed in Note 3 and have appropriate competence to determine the reaction to fire performance of the primary external wall materials and attachments
- In relation to the construction of the external walls, to the best of my knowledge the primary materials used meet the criteria of limited combustibility (Note 6) or better
- In relation to attachments to the external wall (tick one of the following):
  - A1 - There are no attachments whose construction includes significant quantities of combustible materials (i.e. materials that are not of limited combustibility (Note 6) or better);
  - A2 - There is an appropriate risk assessment of the attachments confirming that no remedial works are required
A3 – Where neither of the above two options apply, there may be potential costs of remedial works to attachments (Note 7)

OPTION B(Note 1) – Where combustible materials are present in external wall

I confirm that:

- I belong to one of the professions listed in Note 4 and have appropriate competence to determine the fire risk presented by external walls and attachments
- I have used the reasonable skill and care that would be expected of the relevant professional advisor to assess the level of fire risk (Note 8) presented by the external wall construction and attachments (tick one of the following)
  - B1 - I have concluded that in my view the fire risk (Note 8) is sufficiently low that no remedial works are required
  - B2 - I have concluded that the external wall constructions do not achieve an adequate standard of safety, and I have identified to the client organisation the remedial and interim measures required (documented separately).

Name …………………………… Qualifications ……………………………
Organisation …………………………… Professional body ……………………………
Signature …………………………… Date ……………………………

NOTES

Note 1 - This form includes two options. Option A is for buildings where the materials used in the external wall would be unlikely to support combustion. In this case the signatory would only need the expertise to identify the relevant materials. Option B is for buildings where Option A does not apply and a more detailed review (and hence higher level of fire expertise) is required. The signatory should use either the Option A approach or the Option B approach and delete/cross out the unused option. Within each option there are sub-options, the user should tick the box of the relevant sub-option.

Note 2 – If the Option A approach is used the signatory should be a registered member of an appropriate professional body that covers the built environment. This would include the organisations in the following list:
- Architects Registration Board (ARB)
- Association of Consultant Approved Inspectors (ACAI)
• Chartered Association of Building Engineers (CABE)
• Chartered Institute of Architectural Technologists (CIAT)
• Chartered Institute of Building (CIOB)
• Chartered Institution of Building Services Engineers (CIBSE)
• Construction Industry Council Approver Inspectors Register (CICAIR)
• Institute of Clerks of Works and Construction Inspectorate (ICWCI)
• Institution of Civil Engineers (ICE)
• Institution of Fire Engineers (IFE)
• Institution of Structural Engineers (IStructE)
• Local Authority Building Control (LABC)
• Royal Institute of British Architects (RIBA)
• Royal Institution of Chartered Surveyors (RICS)
• Society of Façade Engineers (SFE)

Note 3 – If the Option B approach is used, the signatory should be a qualified engineer with relevant experience in fire safety, including fire testing of building products and systems. They will normally be a chartered professional and may be a Member or Fellow of the Institution of Fire Engineers but may include registered professionals from another built environment profession specialising in fire safety consultancy. This could include:
• Chartered Institute of Building (CIOB)
• Chartered Institute of Architectural Technologists (CIAT)
• Chartered Institution of Building Services Engineers (CIBSE),
• Institution of Structural Engineers (IStructE),
• Architects Registration Board (ARB),
• Royal Institute of British Architects (RIBA),
• Royal Institution of Chartered Surveyors (RICS).

Note 4 – Should there be a need for a third party to rely on this form, they should contact the signatory’s organisation.

Note 5 - The investigation must include evidence of the fire performance of the actual materials installed. For both Options A and B this would often include either a physical inspection by the signatory to this form, or inspection of photographic or similar information gathered by a 3rd party. For Option B it would also include the standards of construction of key fire safety installations such as cavity barriers. Given the nature of external walls this would typically involve investigations in a limited number of locations (actual number to be determined by the signatory). Review of design drawings may assist but on their own would not be sufficient. If the wall construction includes multiple wall types, the investigation should include each type.

Note 6 – The term ‘limited combustibility is as defined in BS 9991:2015.
Note 7 - In this situation the signatory should notify the client organisation that an appropriate risk assessment of the fire risk of the attachments might be required. The valuation should include a provisional cost against remediation measures for the attachments in case any future risk assessment determines that those be necessary.

Note 8 - The assessment of fire risk as described above includes that insofar as is necessary to ensure a reasonable standard of health and safety of those in and around the building, all external wall constructions and any external attachments (e.g. balconies) of the building:

- Resist spread of fire and smoke so far as is reasonably necessary to inhibit the spread of fire within the building, and
- Are constructed so that the unseen spread of fire and smoke within concealed spaces is inhibited, and
- Adequately resist the spread of fire over the walls, having regard to the height, use and position of the building.

The assessment takes account of regulations (such as such as the Building Regulations and the Regulatory Reform (Fire Safety) Order) and published guidance (such as Approved Document B and the various MHCLG Advice Notes) as were current at the time of construction as well as those which are current at the time of this assessment. It cannot be guaranteed that it would address guidance and regulations which may be introduced in the future.

Note 9 - The signatory may wish to provide their client organisation with a separate report on their investigation to support their statements in this form. That separate report would not normally need to be supplied to the valuer along with this form (unless there are specific issues which may require it).

Note 10 – This form will need to be reassessed if any significant changes occur to the external wall or attachments of the building and is valid for up to 5 years from the date at which it is signed.