



Ministry of Housing, Communities & Local Government

To:

The Chief Executive

Unitary, Metropolitan, District and
London Borough Councils in England
County and County Borough
Councils in Wales

The Town Clerk, City of London

The Clerk, Council of the Isles of Scilly

The Sub-Treasurer, Inner Temple

The Under Treasurer, Middle Temple

The Head of Building Control

Unitary Metropolitan, District and
London Borough Councils in
England

County and County Borough
Councils in Wales

City of London

Council of the Isles of Scilly

Approved Inspectors

cc: The Chief Executive:

County Councils in England
Combined Authorities

National Park Authorities in England
& Wales

The Chief Fire Officer: Fire and Rescue
Authorities in England & Wales

15 February 2018

Dear Sir or Madam

Dame Judith Hackitt's Interim Report of Building Regulations and Fire Safety, *Building A Safer Future*

Dame Judith Hackitt's Interim Report, *Building A Safer Future*, was published on 18 December 2017.

The Interim Report included several recommendations for Government and industry to act upon now to contribute to the provision of safer buildings. I am writing to draw your attention to the key recommendations that concern building control bodies and fire and rescue authorities.

Scope of this Circular Letter

The guidance in this Circular Letter applies to buildings and building work in England, and also to excepted energy buildings in Wales.¹

¹ Excepted energy buildings are defined in the schedule to the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019)

Documents

The full text of the Interim Report is available at:

<https://www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-interim-report>

Procedural guidance for consultation procedures between Building Control Bodies and Fire and Rescue Authorities, *Building Regulations and Fire Safety Procedural Guidance*, can be found at: <https://www.labc.co.uk/guidance/resource-library/technical-guide-building-regulations-fire-safety-procedural-guidance>

Interim Recommendations for Building Control System

The recommendations relevant to the building control system, as expressed by Dame Judith in her Interim Report, are as follows:

- Consultation by **building control bodies** and by **those commissioning or designing buildings** should take place early in the process and fire and rescue service advice should be fully taken into account. The aim should be to secure their input and support at the earliest stage possible so that fire safety can be fully designed in.
- There is a need for **building control bodies** to do more to assure that fire safety information for a building is provided by the person carrying out the building work to the responsible person for the building in occupation. Given the importance of such information for on-going maintenance and fire risk assessment, proof should be sought that it has been transferred.
- **Building developers** need to ensure there is a formal review and handover process ahead of occupation of any part of a new high-rise residential building. While there are legitimate reasons to allow occupation in a phased way, the practice of allowing occupancy of buildings without proper review and handover presents barriers to the implementation of any remedial measures identified as part of the completion process.

Whilst responsibility for compliance with the requirements of the Building Regulations rests with the person carrying out the work, in light of Dame Judith's recommendations the Department is keen to support building control bodies in carrying out their statutory functions to consult with fire and rescue authorities and ensure a handover of fire safety information. These are essential requirements for delivering safe buildings within the current regulatory framework.

Legal Requirements

Those carrying out building work, building control bodies and fire and rescue authorities variously have statutory duties under:

- The Building Act 1984;
- The Building Regulations 2010;
- The Building (Approved Inspectors etc.) Regulations 2010; and
- The Regulatory Reform (Fire Safety) Order 2005 (the "Fire Safety Order").

For building control bodies these include duties to consult fire and rescue authorities. Whilst the requirements for consultation differ for local authorities and approved inspectors, the intent is the same and should have the same effect in practice.

Consultation with the Fire and Rescue Authority

Consultation with fire and rescue authorities is required² on plans for the erection or extension of, structural alteration to, or relevant change of use of, buildings that are covered by the Fire Safety Order. The primary purpose of this consultation is to reduce the risk that additional fire safety measures might be required and/or enforcement action taken by the fire and rescue authority after completion of the building work on occupation or following a change of use.

Consultation with the fire and rescue authorities should take place as early as possible. In particular, local authorities would need the views of the fire and rescue authority before approving a full plans application under section 16 of the Building Act and approved inspectors before giving a plans certificate under section 50 of that Act.

Where fire and rescue authorities are consulted by building control bodies about plans the *Procedural Guidance* is clear that fire and rescue authorities should reply to local authority building control in writing and within agreed timescales (usually 15 working days)³. Local authority building control departments have a statutory requirement to approve or reject plans within two months. Approved inspectors may not give a plans certificate or final certificate until 15 days have elapsed from the date on which they consulted the fire and rescue authority⁴.

Observations made by the fire and rescue authority that are relevant to compliance with Building Regulations should be given full consideration by the building control body. In line with the recommendation in the Interim Report, observations that are not directly relevant to compliance with the Building Regulations but may help the responsible person comply with the provisions of the Fire Safety Order should nevertheless be considered and passed on to the designer / client for them to consider so that fire safety can be fully designed in.

Please note that the requirement to consult with fire and rescue authorities applies also where building owners carry out recladding work on tall buildings, as described in the Circular Letter of 13 July 2017 on the Recladding of Tall Buildings, which can be found at: <https://www.gov.uk/government/publications/circular-letter-on-recladding-of-tall-buildings>.

Fire Safety Information

Regulation 38 of the Building Regulations 2010 requires persons carrying out building work where the Fire Safety Order applies to give fire safety information to the 'responsible person'⁵ no later than the date of completion of the work or occupation of the building, whichever occurs first. Article 4 of the Fire Safety Order sets out the types of information

² For local authorities, article 45 of the Fire Safety Order 2005; for approved inspectors, regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010

³ *Building Regulations and Fire Safety Procedural Guidance*, paragraph 2.16

⁴ Building (Approved Inspectors etc.) Regulations 2010, regulation 12(4)(b).

⁵ Article 3 of the Regulatory Reform (Fire Safety) Order 2005.

to be included and further guidance on this is given in Appendix G of *Approved Document B, volume 2 – Buildings other than Dwellinghouses*

The fire safety information provided under Regulation 38 is intended to assist the responsible person to operate and maintain fire safety within occupied premises. The aim is to ensure that the information relating to the safety of the building is kept with the building, and can be shared with all who have duties (then or subsequently) for the ongoing safety and maintenance of the building. Those carrying out building work should bear in mind that the information should be given to all those who are known to have duties under the Fire Safety Order.

Building control bodies should not issue final or completion certificates for building work until they are sure that fire safety information (in respect of the design, construction, services, fitting and fittings etc) has been provided to the responsible person.

Certification of compliance

The Interim Report identifies the need for building developers to ensure that there is a formal review and handover process ahead of occupation of any part of a new high-rise residential building. Where a building is not occupied before completion of the building work, the normal process of giving a completion or final certificate will apply. These certificates indicate that the building control body is satisfied that the work complies with Part B of the Building Regulations and that the relevant fire safety information has been given to the responsible person.

When a building or part of a building is to be occupied before completion, building control bodies also have a role. Where the local authority is the building control body, the person carrying out the work must notify them of occupation five days before it occurs⁶ and the local authority must give a completion certificate⁷ indicating that it considers that Part B has been complied with and the relevant fire safety information has been given.

Where an approved inspector is the building control body and the building or part of it has been occupied before completion, the initial notice will lapse within four/eight weeks⁸ if a final certificate or part final certificate in respect of the fire safety provisions has not been given.⁹ Approved inspectors should therefore remind their clients to give early notice where it is intended that a building or part of a building is to be occupied before completion to ensure that relevant fire safety information has been given to the responsible person.

Interim recommendations for Government

The Government is also implementing the recommendations in Dame Judith's Interim Report that fall to it directly to deliver. Over coming months we intend to consult on making two sets of changes to Approved Document B. The first will be to revise the wording on assessments in lieu of testing, also known as desktop studies. We have

⁶ Building Regulations 2010, Regulation 16(5).

⁷ Regulation 17A of the Building Regulations 2010

⁸ Regulation 17 of the Building (Approved Inspectors etc.) Regulations 2010

⁹ Section 50 of the Building Act 1984 and Regulation 17(6) of the Building (Approved Inspectors etc.) Regulations 2010

started work with industry experts to draft the guidance and intend to publish a consultation in the spring

The second change will be to clarify the whole document so that it is easier to use. We have carried out a user study on how some of our Approved Documents – including Approved Document B – are used. We are working closely with industry experts and the Building Regulations Advisory Committee (BRAC) to use the insights from the research to produce a document that is more user-friendly. We intend to publish a clarified draft of Approved Document B for consultation.

We are also exploring, in line with Dame Judith's recommendation, our wider approach to guidance contained in Approved Documents and will be seeking views on how the guidance is used and how it can be improved in the future.

Enquiries

Enquiries about this letter should be addressed to enquiries.br@communities.gsi.gov.uk.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Offer Stern-Weiner', written in a cursive style.

Offer Stern-Weiner

Deputy Director
Building Regulations and Energy Performance Division
Ministry of Housing, Communities and Local Government