

<b>Committee(s):</b> Barbican Residents Consultation Committee Barbican Residential Committee	<b>Dated:</b> 27/09/2021 08/10/2021
<b>Subject:</b> Fire Safety Act 2021	<b>Public</b>
<b>Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?</b>	1, 2, 12
<b>Does this proposal require extra revenue and/or capital spending?</b>	<b>N</b>
<b>If so, how much?</b>	<b>N/A</b>
<b>What is the source of Funding?</b>	<b>N/A</b>
<b>Has this Funding Source been agreed with the Chamberlain's Department?</b>	<b>N/A</b>
<b>Report of:</b> Director of Community & Children's Services Remembrancer	<b>For Information</b>
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### Summary

This report advises the Committee of the relevant provisions of the Fire Safety Act 2021, which received Royal Assent on the 29 April 2021. The Fire Safety Act amends the Regulatory Reform (Fire Safety) Order 2005 and is one of several measures introduced following the 2017 Grenfell fire tragedy.

### Recommendation

Members are asked to note the report.

### Main Report

#### Background

1. The Fire Safety Act 2021 is part of a series of changes to fire safety and building safety that the Government is making following the Grenfell Tower fire in 2017, with further primary and secondary legislation to follow. The Act seeks to enable the delivery of the recommendations of the Grenfell Inquiry Phase 1 report, published in October 2019, by placing beyond doubt that external wall systems, including cladding and the fire doors to individual flats in multi-occupied residential blocks, fall within the scope of the Regulatory Reform (Fire Safety) Order 2005. In introducing the Fire Safety Bill (as it was then), Ministers made clear that legislation will play a role in tackling delay and inaction by building owners and developers in instigating remediation works.

2. Following a strained passage through Parliament, the Fire Safety Bill received Royal Assent on 29 April 2021. The Fire Safety Act, as it became on 29 April 2021, differs from the original Fire Safety Bill in that, it includes two Government amendments with, a new clause dealing with risk-based guidance for fire risk assessments, and the related commencement of that guidance.
3. Parliamentary interest in the passage of the Act coalesced around backbench amendments, in both the Lords and Commons, on prohibiting the passing of resulting remediation costs on to leaseholders and tenants. Various iterations of amendments to this effect were agreed by the Lords and caused considerable Government rebellions in the Commons. However, these were eventually rejected on the final day of the parliamentary session.

### **Current Position**

4. The Government's explanatory notes for the (then) Bill state that the legislation "will be of particular interest to building owners, leaseholders or managers for multi-occupied residential buildings who are likely to be the responsible persons" in ensuring they have assessed the fire safety risks and taken necessary precautions in the buildings they are responsible for. Furthermore, the legislation "will also affirm Fire and Rescue Authorities have the relevant enforcement powers to hold owners or managers to account".
5. The Act is intended to complement the existing powers that local authorities have to take enforcement action against building owners and managers under the Housing Health and Safety Rating System, provided for in the Housing Act 2004 and the Building (Amendment) Regulations 2018. The latter, banned the use of combustible materials within the external walls, and certain attachments to the external walls, for any new building with a storey at least 18 metres in height where the building contains at least one dwelling or, met other certain criteria.
6. During the passage of the Act, the Government successfully introduced two amendments that saw the introduction of a new clause dealing with risk-based guidance for fire risk assessments, and the related commencement of that guidance. The Act amends Article 50 of the Regulatory Reform (Fire Safety) Order 2005 to ensure that risk-based guidance, to be issued to support commencement of the Act, will have the appropriate status to incentivise responsible persons to comply with such guidance. Furthermore, in line with a report by the "Task and Finish Group" (co-chaired by the Fire Sector Federation and the National Fire Chiefs Council) the Act will be commenced for all buildings at the same time and, Government will issue statutory guidance covering the assessment of buildings with a risk-based approach.
7. It should be noted that the Fire Safety Act is far from a 'quick-fix' intended to deal with a specific identified concern. Moreover, the Act has not yet been brought fully into force in England or Wales and, it would seem reasonable to assume that it will only fully come into force when the new guidance is ready. The Act does however, contain provisions (which came into force two months after the Act) allowing government to make future regulations to change the scope of the premises

covered by the Fire Safety Order and to make concomitant changes to fire safety duties.

## **Implications for Housing**

8. Fire safety has been of critical concern for all local authorities and housing associations since the Grenfell tragedy in 2017. Essentially, the Fire Safety Act, first proposed in March 2020, was introduced to clarify who is responsible for managing and reducing the risk of fire in different parts of multi-occupied residential buildings to help prevent further tragedies.
9. The legislation brings new fire safety obligations to some leaseholders, building owners and managers for the building structure, external walls, common parts and doors between the domestic premises and common parts.
10. The Fire Safety Act 2021 amends the Regulatory Reform (Fire Safety) Order 2005 (the FSO) with the intention of improving fire safety in multi-occupancy domestic buildings. Crucially, the external walls of a building and, the fire doors to individual flats must now be assessed as part of the requirement for a fire risk assessment. The Act requires the owners and managers of multi-occupied residential buildings to ensure that the fire risk assessments for such buildings are reviewed and updated to encompass the structure, external walls and flat entrance doors.
11. The specific provisions of the Fire Safety Act 2021 include:
  - The Act applies to all multi-occupied residential buildings and is not dependent on the height of the building. The Act further provides English and Welsh Ministers with a regulation-making power to amend the type of buildings the FSO applies to in the future.
  - The FSO designates those in control of the premises as the Responsible Person for fire safety, imposing on them a duty to undertake assessments and manage risks. The Act now requires all Responsible Persons to reduce, as well as to assess and manage, the fire risks posed by the structure and external walls of the buildings and, by individual doors opening onto common parts of the building.
  - The FSO was enforced by fire and rescue authorities but, the Act allows these authorities to enforce against non-compliance in relation to the external walls and the individual doors opening onto the common parts of the premises.
  - The Act also introduces the concept of 'risk-based' guidance in order to support a proportionate approach towards assessing risk.

## **Ongoing measures for addressing the requirements of the Fire Safety Act 2021**

12. Back in September 2017, an initial detailed report was presented to the Barbican Residential Committee (BRC) and the Audit and Risk Management Committee updating Members on the City of London Corporation's (CoLC) approach to fire safety in its housing portfolio. This report informed Members of the progress we had made with matters such as:
  - fire risk assessments,

- communication with residents,
- estate management,
- fire safety maintenance and improvement work,
- inspections by the London Fire Brigade (LFB),
- potential future improvement works.

13. Regular update and review reports have been brought back to the BRC, informing Members of the work that has been and, is being done to enhance the safety of the Barbican Residential Estate and its residents in the event of fire.

14. As Members will be aware from these reports, there is a significant amount of work that has been/is being done across the Barbican Estate that will address some of the requirements and objectives of the Fire Safety Act 2021 including:

#### Fire Risk Assessments (FRA's)

15. As Members are aware, Frankham Risk Management Services Limited completed FRAs for each of the residential blocks on the Barbican Estate in January/February 2018 and, as agreed by Members, these were published on the Corporation's website.

16. Whilst, understandably, our focus has been on continuing the progress we have made on the improvements identified in the FRA Action Plan, we have recently appointed Turner & Townsend to carry out new Type 3 (with a number of targeted Type 4) FRA's for our housing stock. Turner & Townsend has now commenced this work on our HRA housing estates, with the residential blocks on the Barbican Estate to follow later in the year. The brief given to Turner & Townsend includes a focus on the assessment of external walls and individual flat entrance doors opening onto the common parts of buildings as specifically highlighted in the Fire Safety Act 2021.

#### Fire Doors

17. The Corporation has committed to replacing all front entrance doors in its residential blocks of flats with fire doors that give up to 60 minutes fire resistance (30 minutes as an absolute minimum).

18. We are currently carrying out a full BM Trada audit of the fire doors across all the residential blocks on the Barbican Estate, the results of which, will feed into the Barbican Fire Door Replacement Project. At its last meeting on 28 June 2021, the BRC received a Gateway 2 Progress Report setting out the next steps for this project which, will likely take up to two years to be completed.

#### External Wall Cladding

19. Shortly after the Grenfell tragedy in 2017, the Corporation carried out an assessment of the construction of the external walls to blocks of flats within its social housing portfolio and across the Barbican Residential Estate. The blocks of flats on the Barbican are, in the main, traditionally built with no significant areas of wall cladding. Furthermore, there have been no subsequent 'improvement' works

carried out to the blocks of flats that has seen the introduction of external wall cladding typically used to improve the level of thermal insulation to traditionally built blocks.

## **Proposals for further measures to address the requirements of the Fire Safety Act 2021**

20. Although the Corporation is taking proactive measures to ensure the continued compliance with relevant fire safety legislation and, wherever possible, pre-empting future legislation, there is still further work to be done. This includes the following:

### Clarification around the role of the Responsible Person

21. Under Article 3 of the FSO, the “responsible person” of a premise (either a building or any part of it) is the person who has control of the premises (“the Responsible Person”), which may include building owners, leaseholders or managers.
22. Since the scope and scrutiny of fire safety obligations have increased significantly, the Responsible Person needs to review and update risk assessment processes accordingly. Once the risk assessment processes are published, the Responsible Person should apply the risk-based guidance (under Section 3 of the Act) in order to comply with his/her duties in Part 2 of the FSO.
23. The clarification provided under the Act, extending the provisions of the FSO set out above, means that the Fire and Rescue Authorities can now better identify the Responsible Person for these parts. This will, by definition, clear the path for enforcement action against and/or prosecution of any Responsible Person who fails to comply with the FSO, which could ultimately lead to unlimited fines and/or criminal prosecutions.
24. To a certain extent, the role of the Responsible Person for the Corporation’s housing portfolio is currently split between the Estate Office and technical staff with responsibility for ensuring FRA’s are carried out and recommendations acted upon. In view of the extended provisions of the FSO, this is not a sustainable option.
25. Further work is now being done to assess the role of the Responsible Person and, who that named person will be. It does make sense, as is the case currently, that the Responsible Person should be an estate-based manager however, there is a need to provide targeted and specific training for those staff who will officially take on that role. Similarly, there will also be a need to amend Job Descriptions to reflect the additional responsibility that comes with the role. At this stage however, consideration is also being given to the need for additional specialist resources to carry out the role of the Responsible Person.

### Commissioning EWS1 Forms for all our housing blocks of flats

26. An EWS1 (External Wall System) form provides independent assurance that a building meets the requirements of the Government’s latest standards. It is not a legal requirement however, some lenders are now asking for EWS1 forms before

they will consider offering a mortgage. We are receiving an increasing number of requests from our residents for EWS1 forms for this purpose.

27. The Royal Institution of Surveyors (RICS) has produced guidance suggesting that any residential building could require an EWS1 form. For guidance purposes and, for members information:

**For buildings over six storeys, an EWS1 form should be required where:**

- there is cladding or curtain walling on the building or,
- where there are balconies that stack vertically above each other and either, both the balustrades and decking are constructed with combustible materials (e.g. timber) or the decking is constructed with combustible materials and the balconies are directly linked by combustible material.

**For buildings of five or six storeys, and EWS1 form should be required where:**

- there is a significant amount of cladding on the building or,
- there are ACM, MCM or HPL panels on the building or,
- there are balconies that stack vertically above each other and either, both the balustrades and decking are constructed with combustible materials (e.g. timber), or the decking is constructed with combustible materials and the balconies are directly linked by combustible materials.

**For buildings of four storeys or fewer, an EWS1 form should be required where:**

- there are ACM, MCM or HPL panels on the building.

28. Currently, the Corporation does not provide EWS1 forms to residents who request one and, this is creating problems for residents seeking mortgages. The Corporation has very few blocks of flats that fall into the categories set out in Paragraph 27 above and as stated previously, there is no legal requirement for the Corporation to provide EWS1 forms.

29. Officers are currently reviewing the various options around EWS1 forms which include:

- not providing them.
- providing them for all our housing blocks to give independent assurance to the Corporation and its residents on the structure and safety of the external wall construction (estimated cost of £60,000).
- to continue with a risk-based approach based on criteria we gather from our records, surveys and FRA's to allow us to determine the risk level and prioritise those we deem there is a need for an intrusive assessment to be conducted.

30. It should be noted that currently, due to national demand and shortage of skilled professionals who can carry out the required assessments, EWS1 forms are taking a considerably long period of time to acquire.

## **Further Legislation – Building Safety Bill**

31. On 5 July 2021, the Secretary for Housing, Robert Jenrick, introduced a revised draft of the Building Safety Bill into the House of Commons. The revised Bill follows a three-year scrutiny and public consultation process and represents a wholesale reform of the building safety regime, in line with the recommendations of Dame Judith Hackitt's 2018 Independent Review: Building a Safer Future. The Bill sets out a new regulatory regime aimed at ensuring the safety of residents in residential buildings.

32. The Building Safety Bill establishes a much tighter regulatory regime for buildings above 18 metres high (referred to as 'higher risk' buildings) and includes:

- a new Building Safety Regulator with approval, enforcement and prosecutorial powers.
- mandatory reporting of structural and fire safety occurrences.
- new obligations on Clients, Principal Designers and Principal Contractors, with 'Gateway' points at design, construction and completion to ensure fire and structural safety is considered at every stage of a building's development.
- the creation of new Accountable Person and Building Safety Manager roles to ensure that fire and structural safety continues to be managed throughout a building's lifetime.
- criminal liability for both companies and their directors for breaches – with unlimited fines and imprisonment for up to two years.

33. The Bill is expected to receive Royal Assent in the Spring next year (2022). The Government has indicated that the first round of provisions will come into force within 6-12 months of the Bill receiving Royal Assent (October 2022 to April 2023). The bulk of the new regulatory regime will likely come into force within 12-18 months of Royal Assent (April 2023 to October 2023). Certain obligations will, and have come into force earlier, such as the Gateway 1 process for construction and major refurbishment of higher-risk buildings (1 August 2021).

34. The Building Safety Bill is a much broader piece of legislation than the Fire Safety Act 2021, covering risks over and above fire safety (flooding, wind loading etc). However, the Bill has links to the Fire Safety Act 2021 and, officers will be giving due regard to the implications for the Building Safety Bill when finalising proposals for dealing with the requirements of the Fire Safety Act 2021.

## **Corporate & Strategic Implications**

### Strategic Implications

35. The proposals contained in this report are consistent with, align with and support the delivery of the Corporate Plan with particular reference to the following:

- Outcome 1 – People are safe and feel safe.
- Outcome 2 – People enjoy good health and wellbeing.
- Outcome 12 – Our spaces are secure, resilient and well-maintained.

## **Conclusion**

36. The new Fire Safety Act 2021 brings significant new fire safety obligations to building owners and managers for the building structure, external walls, common parts and doors between the domestic premises and common parts.

37. This report sets out the work that officers have done and are doing to ensure that the Corporation is best placed to comply fully with the requirements of the new Fire Safety Act 2021.

38. Members should note that further reports will be brought back to the relevant Committees in due course, setting out the progress that has been made and, the subsequent proposals for ensuring compliance with the legislation.

## **Appendices**

None

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