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Dear Convener,

**Housing (Cladding Remediation) (Scotland) Act 2024**

I am writing to update the Committee in respect of two matters relating to the above Act, namely the laying of commencement regulations and the publication of the statutory 'Single Building Assessment Standards'.

Firstly, I can now confirm that the Scottish Government plans to lay commencement regulations in December that will bring all the remaining provisions in the Act into force with effect from **6 January 2025**.

Secondly, and with reference to Section 32(1)(c) of the Act, I am now enclosing a draft of the Standards. I also intend to formally bring these into force on 6 January 2025, when the final Standards will be published on the Scottish Government website.

I hope these updates are helpful to the Committee. I will be happy to provide any further information, including when I give evidence to the Committee on 10 December.

Yours sincerely,

**PAUL MCLENNAN**

# Draft Standards for Single Building Assessments and Additional Work Assessments

## Introduction

The Housing (Cladding Remediation) (Scotland) Act 2024<sup>1</sup> (“the 2024 Act”) introduces the concepts of a ‘Single Building Assessment’ and ‘Additional Work Assessment’.

A Single Building Assessment (SBA)<sup>2</sup> is an assessment which results in a report on any risk to human life that is (directly or indirectly) created or exacerbated by a building’s external wall cladding system, and what work (if any) is needed to eliminate or mitigate this risk.

An Additional Work Assessment (AWA)<sup>3</sup> is required where additional information comes to light in the period between an SBA being completed and the date on which Scottish Ministers were satisfied that any work identified in the SBA or a previous AWA had been completed. This may occur during opening of works, or in an unexpected situation where previously unobserved material is found.

Section 32 and section 34 of the 2024 Act state that an SBA or AWA must be carried out in accordance with **Standards** for the time being specified by the Scottish Ministers.

This document sets out these Standards. These must be complied with when undertaking an SBA or AWA in scope of the Act<sup>4</sup> and apply regardless of who is commissioning an SBA or AWA.

The Standards comprise:

- the Single Building Assessment specification (see below)
- some further provisions on the conduct of SBAs/AWAs
- requirements to retain information.

These Standards will be kept under review as assessment and remediation of buildings progresses, to ensure that they are working in practice and that they are achieving the desired outcomes.

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2024/7/contents/enacted>

<sup>2</sup> For a full definition of an SBA please see section 32 to the Act <https://www.legislation.gov.uk/asp/2024/7/section/32/enacted>

<sup>3</sup> For a full definition of an AWA please see section 34 of the Act <https://www.legislation.gov.uk/asp/2024/7/section/34/enacted>

<sup>4</sup> As outlined in section 32, a building in scope of the Act is one which is (i) a flatted building as defined in section 16(4) of the Land Registration etc. (Scotland) Act 2012; (ii) contains at least one flat that is used, or intended to be used, as a dwelling; (iii) has an external wall cladding system; (iv) stands 11 metres or more above the ground, and (v) has been constructed, or otherwise undergone development, at any time within the period beginning with 1 June 1992 and ending with 1 June 2022.

These Standards do not replace or supersede existing Building Standards or Fire Safety Legislation, which continue to apply (see the Single Building Assessment Specification, below).

### **Earlier assessments**

Where assessments have been carried out **before** the publication of these Standards, it will be necessary to have a new SBA carried out. This is to provide reassurance that the assessment meets these standards. In these circumstances, existing information from the previous existing assessment may be drawn upon to inform the Single Building Assessment. It will be for the competent person undertaking the assessment to determine what information from any previous assessments remains relevant.

### **The Cladding Assurance Register**

Section 1 of the 2024 Act states that Ministers will maintain a register of buildings (the Cladding Assurance Register, or CAR), and that an entry for a building will be **created** once an SBA has been carried out in relation to it.

It is Ministers' intention that the Register will be **updated** ordinarily within 30 days of receiving notification from the Assessor that remedial works have been completed, the SBA has been updated, and that the building is now at a tolerable risk level (see arrangements for audit below).

Whether or not an entry has been subject to audit, if matters subsequently come to the attention of Scottish Ministers' that affect the accuracy of the Register, the Scottish Ministers may amend it.

### **Single Building Assessment Specification**

These Standards incorporate and bring into statutory effect the Single Building Assessment Specification ('the SBA specification') that was published on 21 June 2024. This sets out the methodology for undertaking an SBA and or AWA consistent with the industry approach for fire risk appraisals of an external wall. The 'SBA specification' can be accessed via the following link:

<https://www.gov.scot/publications/single-building-assessment-specification-sba/>

### **Peer Review**

As set out in section 3.5.1 of the 'SBA specification' a peer review is required. **In addition**, the Assessor's report must confirm agreement on the suitability of the SBA against each of the SBA headings, namely:

- Introduction
- Relevant Legislation and Guidance
- Fire Risk Appraisal External Wall (Use Section 15 Of PAS9980 For Guidance)
  - Introduction
  - Fire Risk Assessment of External Walls (PAS9980 Five Step Approach To Assessment)

- Conclusion
- Fire Risk Assessment of Internal Areas
  - PAS 79-2
  - Assessment of Internal Areas (Annex)
- Summary and Next Steps
  - Holistic Building Risk Posed to Human Life
  - Remediation Recommendations
- Update Following Remedial Actions (note: not always required)

The peer reviewer must also complete and include the checklist contained in Appendix B of SBA specification and may also wish to provide a commentary on aspects that were revised following initial peer review.

### **Updating the Single Building Assessment**

Where remediation works have been undertaken, section 5.2.18 of the SBA specification outlines that the commissioning party (persons or persons who instructed the SBA be initiated) **must** have the SBA updated to reflect the remedial works that have been undertaken and conclude the tolerable risk that is now present. The updating of the SBA is an essential step, following this update the SBA must be provided to Scottish Ministers to allow the Register to be updated. This provides **assurance** that any works undertaken address the risks identified in the initial SBA (or AWAs, if any) and that the building is now at a tolerable risk level.

This process of assurance must be undertaken by the Assessor who undertook the SBA, or another industry professional who meets the competency requirements set out in Section 2.8 (and is authorised by the Scottish Ministers) if the former is not available. For the Assessor to undertake this duty the commissioning party must ensure all relevant documentation is made available in relation to assessment, design, works, and remediation.

**In addition**, the Assessor in satisfying themselves that the works have been undertaken as per the SBA (and AWAs, if any) must assure themselves of the following:

- any works set out in Table 3, Appendix H<sup>5</sup> of the SBA specification and the design plan and work(s) contracts have been implemented and complied with.
- any requirements specified in any building warrant and other required statutory consents have been carried out as necessary, and the completion certificate has been accepted by the verifier/local authority.

### **Evidence**

To meet the above an Assessor may rely on a range of evidence. This might include (but not be limited to) the following.

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<sup>5</sup> Appendix H Single Building Assessment Specification - <https://www.gov.scot/publications/single-building-assessment-specification-sba/documents/>

- site visits
- photographs
- videos
- cover up release (requiring critical aspects of work to be left uncovered until inspected by Assessor)
- Borescope survey
- material records.

### **Retention of Information**

To support compliance with these Standards, the Commissioning party must retain material/evidence following notification that works have been completed (that is, when the Assessor has updated the SBA to signal work has carried out and the overall risk of the building is now tolerable). Information should be kept until notified that they are no longer needed by Scottish Ministers.

Documents or information that must be retained are as follows:

- copies of the SBA and or AWA(s), original surveys or assessments carried out prior to the publication of these Standards,
- details of the competent person/persons that undertook the SBA and AWA(s),
- copies of the design works/plans including who undertook design/planning,
- other data, information, records that relate to assessment and remediation including but not limited to, building warrant for works (if applicable), contractors/sub-contractors carrying out relevant works, schedule of works, proof of materials used in works/remediation, and completion certificate,
- photographs, records and information gathered from visits to the site by the Assessor and or the commissioning party.

**This concludes the Standards. The following text does not form part of the standards and is provided for information only.**

### **Legal Provisions Supporting Compliance and Assurance**

The 2024 Act gives Ministers various powers including, as noted above, in section 5 the power to require any person to supply them with information which is reasonably required:

- by a person for the purpose of carrying out a single-building assessment or an additional work assessment, or
- by them for the purpose of maintaining the cladding assurance register.

Scottish Ministers can therefore ask for any information that is reasonably required in connection with assessment and remediation works, and to allow them to maintain the Cladding Assurance Register. A person who is required under section 5 to supply information commits an offence if the person fails, without reasonable excuse, to supply the information in the required form by the date by which it is to be supplied (section 6 of the 2024 Act).

The 2024 Act (section 2) also makes it an offence for a person to provide information that the person knows, or ought to know, is false or misleading to the Scottish Ministers or to a person carrying out an SBA or AWA, and the person knows, or is reckless as to whether, giving the information is likely to result in (1) a material inaccuracy in the Register, or (2) an entry in the Register for a building not being created when it otherwise would.

These provisions of the 2024 Act give Scottish Ministers a route to additional assurance and compliance at key junctures in the assessment and remediation of a building. During assessment and remediation, details may come to the attention of Ministers including requests from owners and occupiers that merit Scottish Ministers asking for more information.

### **Audit**

In addition to the compliance and assurance processes in place (as set out in these Standards), Scottish Ministers intend to conduct a proportionate level of audit, to allow them to assess how well the process is operating more broadly. This will cover both assessment and remedial works.

It is Scottish Ministers' intention that audit of this kind will be carried out in relation to a proportion of buildings only and **in advance of** the Register being updated to state that Ministers are satisfied works have been carried out to these Standards.

Where an entry is to be audited, Scottish Ministers will indicate within 30 days of receiving notification that remedial works have been completed that they intend to conduct an audit. In doing so they will provide a maximum of 20 days' written notice. A reasonable request to meet with Scottish Ministers/officials to discuss their approach to carrying out assessment and remediation may form part of the audit.

The audit will be undertaken or with input from a suitably experienced, qualified, independent and competent fire risk or external wall assessor.

Following completion of the audit, the Register will be updated ordinarily within 30 days.

### **Dispute Resolution**

Should there be significant material difference(s) in the opinion between the assessor appointed by the Government to carry out an audit and that of the Assessor appointment by the Commissioning party in relation to the SBA assessment and remediation that cannot be resolved through good faith discussion, Scottish Ministers propose that, unless other specific dispute resolution provisions apply, the following process should take place.

- 1) The Commissioning party and Scottish Ministers discuss and try to reach agreement on any disputed items and by mutual agreement. A mediation party may be appointed.

- 2) If the above does not result in an agreed position, a mutually agreed and expert adjudication specialist shall be appointed. The decision arrived at of such expert shall be accepted as final by both parties.
  
- 3) If the conclusion of the adjudication expert is that the SBA does not meet the standards and or works have not been completed in line with the SBA then it will be for the Commissioning party to remedy. This will include further assurance that the SBA now meets the standards. At this point the Register will be updated to confirm that Scottish Ministers are satisfied the works have been carried out to these Standards.