

Local Government, Housing and Planning Committee

30th Meeting, 2022 (Session 6), Tuesday 12 December 2023

Housing (Cladding Remediation) (Scotland) Bill

Evidence session with the Scottish Government Bill Team

Introduction

1. The purpose of this paper is to provide information for the Committee's evidence session with the Bill team for the Housing (Cladding Remediation) (Scotland) Bill ("the Bill").
2. The Bill and its accompanying documents are available [online](#).
3. This will be the Committee's first evidence session on the Bill and will be an opportunity for the Committee to develop its understanding of the Bill ahead of hearing from stakeholders on the Bill in the New Year.
4. At the meeting the Committee will hear from:
 - Kate Hall, Director, Cladding Remediation Directorate
 - Rachel Sunderland, Deputy Director, Cladding Remediation Directorate
 - Micheila West, Scottish Government Legal Directorate

Background

5. In the early hours of Wednesday 14 June 2017 a fire broke out in the kitchen of Flat 16 of the 24 storey tall Grenfell Tower, a residential building located in North Kensington, West London. The tower was originally constructed of reinforced concrete and designed to contain fires within the flat in which they originated long enough for the fire brigade to attend and extinguish any blaze. However, the building had recently had a cladding system added, which comprised combustible foam insulation boards attached to the outside of the concrete structure. These were protected from the weather by aluminium composite material panels, the core of which was highly combustible.

6. The fire, which should have been contained within the confines of Flat 16, escaped from the kitchen into the external envelope of the building. Firefighters attended the fire and within minutes of their arrival had extinguished the fire within the kitchen of Flat 16, but by that time the fire had already escaped into the cladding where they were unable to fight it successfully. Once established within the cladding the fire spread rapidly up the outside of the building. Within 20 minutes a vertical column of flame had reached the top of the building on the east side from where it progressed around the rest of the structure, so that within a few hours it had engulfed almost the whole of the building.

7. The fire claimed the lives of 71 people who were present in Grenfell Tower that night.

8. The circumstances of the fire have been, and continue to be, explored by the Grenfell Tower Inquiry, established by the UK Government in August 2017 and chaired by The Rt Hon Sir Martin Moore-Bick.

9. In addition to the public inquiry, the Scottish and UK Governments initiated several reviews of fire safety and building standards following the Grenfell Tower fire. Significant developments in Scotland, relevant to the Bill, since June 2017 are very briefly described below:

10. **Ministerial Working Group on Building and Fire Safety:** Established in June 2017 in the immediate aftermath of the Grenfell Tower fire, this stakeholder group has overseen reviews of building standards and fire safety frameworks, regulations and guidance. Key outputs include:

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- the introduction of a statutory requirement for smoke and heat alarms to be fitted in all homes
- changes to fire safety related Building Standards for high-rise buildings that were agreed by the Scottish Parliament in 2022 and are now in force
- revised procedural guidance for building standards officers
- the establishment of several long-term groups/boards to consider building and fire safety issues.

11. **Inventory of High Rise Buildings:** The Ministerial working group quickly established that there was no central source of standard information on Scotland's high-rise domestic buildings, which hindered any national assessment of what action needed to be taken to rectify potential fire safety defects and the likely costs. The Scottish Government commissioned consultants to develop a High-Rise Inventory (HRI), a summary of which was published in November 2021. This reports that there are 780 high-rise buildings in Scotland (buildings with a storey height of 18 metres or more above ground), which are spread across 15 local authorities – although 49% are found in Glasgow. In total, there are 46,616 flats within these high-rise buildings. 38 buildings are clad in Aluminium Composite Cladding (ACM), 23 of which are clad in the highest risk "Category 3" panels.

12. **Zero valued homes and EWS1:** The issue of “zero valued homes” first arose in December 2018 when the UK Ministry for Housing, Communities and Local Government issued an advice note to anyone responsible for, or advising on, the fire safety of potentially combustible external wall systems on high rise residential buildings. The introduction of this advice, since superseded by Scotland-specific advice issued in August 2021, has led to some mortgage lenders refusing to provide loans for the purchase of flats in high rise buildings unless there is proof that they meet the requirements set out in the advice note. Where such proof is not available, surveyors could value such properties at £0 for lending purposes. This obviously has implications for home-owners, those wishing to buy and the operation of the wider housing market.

13. It quickly became apparent after the publication of the first advice note that there was no standard process for assessing the fire safety of existing high-rise properties that would satisfy the needs of home owners and financial institutions. The Royal Incorporation of Chartered Surveyors (RICS), working with the Building Societies Association (BSA), and UK Finance then developed an industry-wide valuation process aimed at resolving this issue (known as EWS1).

14. It is important to note that the EWS1 system is not a statutory requirement. It was created to standardise fire safety assessments for buildings with external wall cladding systems to allow financial institutions to issue mortgages and insurance.

15. **Ministerial Working Group on Mortgage Lending and Cladding:** Established by Scottish Ministers in 2020, this working group investigated possible solutions to the issue of zero-valued homes. Reporting in early 2021, the group’s key recommendation was the eventual replacement of the EWS1 with a Scottish Government backed Single Building Assessment.

16. **Single Building Assessment:** The Scottish Government announced the establishment of a Single Building Assessment programme in March 2021. The aim being to offer free fire safety assessments for all affected buildings – paving the way for publicly funded remediation work on buildings found to have unsafe cladding systems.

17. The Cabinet Secretary for Social Justice, Housing and Local Government wrote to the Local Government, Housing and Planning Committee on 27 March 2023, including an update on the Single Building Assessment programme, the key information being:

- “...three Single Building Assessments are being commissioned in partnership with developers. Fourteen Single Building Assessments have reached a reporting stage and remediation has started on one building.”

18. Scottish Government figures, updated in September 2023, show that 105 buildings are currently part of the Single Building Assessment programme.

19. **Scottish Safer Building Accord:** The Scottish Government announced the creation of the Scottish Safer Building Accord on 12 May 2022, which the Cabinet Secretary described as:

- “It is my clear expectation that developers linked to buildings with problematic cladding will fund remediation where this is identified. That will ensure that when public funds are needed to be spent, we can use them to focus on buildings and works where a developer cannot be identified or no parent developer exists. The creation of our Accord with the housebuilding sector and homeowners will form the basis of a way to address each building’s needs. However I want to also make clear that if required, I will make full use of the powers available to us to bring parties to the table, including if necessary, using legislation to do so.”

20. The Cabinet Secretary's letter to the Local Government, Housing and Planning Committee on 27 March 2023 provided a progress update on the development and implementation of the Accord, which stated:

“Unfortunately, there remain a small number of outstanding, but critical issues on which we have not been able to agree. The main point of impasse being an unwillingness of developers to accept the need to work to legal Scottish Building Standards. Developers want to apply a single approach to Building Standards across the UK even when remediating buildings in Scotland.”

21. The Cabinet Secretary provided an update on the progress of the Accord in an answer to a parliamentary question issued on 25 May 2023, which indicated that:

“The Scottish Government is determined to ensure that buildings with unsafe cladding are remediated and that developers meet their responsibilities. The Scottish Government has been working closely with Homes for Scotland and the 10 largest developers who work across the UK (wave one developers) to agree a Scottish Safer Buildings Accord. We have now reached an in-principle agreement with Homes for Scotland and a number of those wave one developers on the Accord. This is an important step in the process. We will now move to agree the long form legally-binding contract to support the remediation of developer linked buildings with unsafe cladding. We will continue to engage with the remaining wave one developers to address outstanding technical questions and open discussions with the smaller and medium sized developers on their responsibilities. We are continuing to explore legislative options to safeguard residents and homeowners.”

22. Those "legislative options" have been developed into the proposals in the Bill.

The Bill

23. The Bill was introduced in the Parliament by the Cabinet Secretary for Social Justice on 1 November.

24. The Bill would give the Scottish Ministers powers to identify and remediate risks to life posed by potentially flammable building cladding systems, and establish a "cladding assurance register" to hold details of cladding system surveys and remedial works.

25. The Bill would also allow Scottish Ministers to establish a "responsible developers scheme". This would require developers of buildings clad with potentially flammable material to contribute towards any survey and remediation of buildings that they constructed. Failure to agree to such arrangements could see a developer added to a "prohibited developers list" - which would prohibit them from carrying out any development, or any class of development specified in regulations.

26. The provisions in the Bill would only apply to multi-residential domestic buildings that are 11 metres or over in height and incorporate an external wall cladding system. Buildings between 11 and 18 metres in height are referred to in Bill documentation as "mid rise", while those 18 meters plus are known as "high rise" buildings.

27. Part 1 will require Scottish Ministers to maintain a Cladding Assurance Register. Every building subject to a Single Building Assessment will have an entry in the Register, which will set out the results of that assessment and any remedial work carried out. Part 2 provides the Scottish Ministers with a power to arrange remediation work identified in a Single Building Assessment report as necessary to eliminate or mitigate risks to human life that are (directly or indirectly) caused by the building's external wall cladding system. Work undertaken on premises under these powers can proceed without the consent of the owner, provided that a notice period has elapsed and any appeal which may have been lodged has been determined or withdrawn.

28. Part 4 allows the creation of a responsible developers' scheme, details of which will be set out in Regulations. The Bill does provide some "elaboration" on what these Regulations will establish – including the requirement for developers to contribute towards the cost of remediating buildings which they constructed and preventing eligible developers who are not members of a scheme from carrying out development, or certain classes of development, in Scotland.

29. The Bill pertains to cladding alone and does not make provision for any other matters relating to building safety such as Reinforced Autoclaved Aerated Concrete.

Next steps

30. The Committee issued a call for views, which closed on 8 December. Informed by those responses, the Committee will shortly agree a programme of oral evidence for the New Year.

**Clerks to the Committee and Alan Rehfisch, Senior Researcher, SPICe
December 2023**